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# federal register

Tuesday
October 3, 1995

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[Two Sessions]

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# Contents

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 1995

**Agency for International Development**
NOTICES
Meetings:
Voluntary Foreign Aid Advisory Committee, 51831

**Agricultural Marketing Service**
RULES
Filberts/hazelnuts grown in Oregon and Washington, 51668–51669
PROPOSED RULES
Sheep promotion, research, and consumer information, 51737–51746

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Food Safety and Inspection Service
*See* Forest Service
*See* Grain Inspection, Packers and Stockyards Administration

**Air Force Department**
NOTICES
Active military service and discharge determinations:
American Field Service (AFS) civilians who served overseas operationally (April 6, 1917–January 1918, and November 10, 1941–August 1945), 51781

**Antitrust Division**
NOTICES
Competitive impact statements and proposed consent judgments:
Health Choice of Northwest Missouri, Inc., et al., 51808–51817

**Army Department**
*See* Engineers Corps

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Assassination Records Review Board**
NOTICES
Organization, functions, and authority delegations, 51773–51774

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Immunization Practices Advisory Committee, 51801–51802

**Coast Guard**
RULES
Drawbridge operations:
Massachusetts, 51727–51732
New Jersey, 51732
Ports and waterways safety:
Automated dependent surveillance shipborne equipment; incorporation by reference, 51733–51734

**Commerce Department**
*See* Export Administration Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request; correction, 51835

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 51833

**Defense Department**
*See* Air Force Department
*See* Defense Investigative Service
*See* Engineers Corps
*See* Navy Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic fund transfers; payments, 51766–51769
NOTICES
Agency information collection activities under OMB review, 51778–51779
Civilian health and medical program of uniformed services (CHAMPUS):
DRG-based payment system; 1996 FY, 51779–51780
Meetings:
Defense Intelligence Agency Scientific Advisory Board, 51780
Education of Handicapped Dependents National Advisory Panel, 51780–51781

**Defense Investigative Service**
PROPOSED RULES
Privacy Act; implementation, 51764–51765
NOTICES
Privacy Act:
Systems of records, 51781–51782

**Employment Standards Administration**
*See* Wage and Hour Division

**Energy Department**
*See* Federal Energy Regulatory Commission

**Engineers Corps**
NOTICES
Meetings:
Inland Waterways Users Board, 51781

**Environmental Protection Agency**
PROPOSED RULES
Superfund program:
Radionuclide releases; administrative reporting exemptions, 51765–51766
NOTICES
Confidential business information and data transfer, 51790–51791
Privacy Act:
Systems of records, 51791–51793

Water programs:
States and Indian tribes water quality standards; listing of approvals, 51793–51797

**Equal Employment Opportunity Commission**
**PROPOSED RULES**
Employment discrimination:
Age Discrimination in Employment Act—
Apprenticeship programs; coverage, 51762–51764

**Executive Office of the President**
*See* Presidential Documents
*See* Trade Representative, Office of United States

**Export Administration Bureau**
**NOTICES**
Meetings:
Transportation and Related Equipment Technical Advisory Committee, 51774

**Federal Aviation Administration**
**RULES**
Air carrier certification and operations:
Advanced qualification program (SFAR No. 58); termination date, 51850–51851
Airport security:
Unescorted access privileges; employment investigations and criminal history record checks, 51854–51871
Airworthiness directives:
Airbus, 51703–51705
Boeing, 51705–51707
Dassault, 51707–51709
Learjet, 51709–51712
Lockheed, 51713–51715
Standard instrument approach procedures, 51715–51718
**PROPOSED RULES**
Class E airspace, 51747–51748
**NOTICES**
Exemption petitions; summary and disposition, 51831–51832
Meetings:
Capacity Council Industry Outreach, 51832

**Federal Communications Commission**
**NOTICES**
Radio broadcasting:
U.S. Virgin Islands; license renewal applications; filing date extension due to Hurricanes Luis and Marilyn, 51797–51798
Rulemaking proceedings; petitions filed, granted, denied, etc., 51798

**Federal Election Commission**
**NOTICES**
Meetings; Sunshine Act, 51833

**Federal Energy Regulatory Commission**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Columbia Gas Transmission Corp., 51785–51786
Gateway Pipeline Co. et al., 51786
Northern Natural Gas Co., 51787
Northwest Pipeline Corp., 51787
Pacific Gas Transmission Co., 51787
Southern Natural Gas Co., 51788
South Georgia Natural Gas Co., 51787
Transcontinental Gas Pipe Line Corp., 51788–51790
Young Gas Storage Co., Ltd., 51790

**Federal Housing Finance Board**
**NOTICES**
Meetings; Sunshine Act, 51833

**Federal Reserve System**
**RULES**
Availability of funds and collection of checks (Regulation CC):
Technical corrections, 51669–51703
**NOTICES**
Agency information collection activities under OMB review; correction, 51798
Meetings; Sunshine Act, 51833
*Applications, hearings, determinations, etc.:*
AMCORE Financial Inc., 51799
FW Financial, Inc., 51799
NationsBank Corp. et al., 51799–51800
Shen Financial Fund I, L.P., et al., 51800

**Food and Drug Administration**
**RULES**
Animal drugs, feeds, and related products:
Ceftiofur sterile powder for injection, 51718–51719
**NOTICES**
Advisory committees, panels, etc.
Food Advisory Committee; notification date extension, 51802
Medical devices:
Blood establishment computer software products; letter to manufacturers, 51802–51803
Reports; availability, etc.:
Monosodium glutamate (MSG); adverse reactions analysis, 51803

**Food Safety and Inspection Service**
**NOTICES**
Meetings:
Microbiological Criteria for Foods National Advisory Committee, 51770

**Foreign-Trade Zones Board**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Georgia, 51774–51775
New York
Low Complexity Manufacturing Group, Inc.; copier, laser printer components, 51775

**Forest Service**
**NOTICES**
Environmental statements; availability, etc.:
George Washington and Jefferson National Forests, VA and WV, 51770–51773
Meetings:
Klamath Provincial Advisory Committee, 51773
Southwest Oregon Provincial Interagency Executive Committee Advisory Committee, 51773

**General Services Administration**
**PROPOSED RULES**
Federal Acquisition Regulation (FAR):
Electronic fund transfers; payments, 51766–51769

**Government Ethics Office**
**RULES**
Technical amendments, 51667

**Government Printing Office**
NOTICES
Meetings:
Online access to Federal Register and other Federal databaes; demonstration, 51800–51801

**Grain Inspection, Packers and Stockyards Administration**
RULES
Grain standards:
Special grade designations; CFR correction, 51667

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health

**Housing and Urban Development Department**
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 51805–51806
Grants and cooperative agreements; availability, etc.:
Congregate housing services program, 51838
Regulatory waiver requests; quarterly listing, 51840–51848

**Indian Affairs Bureau**
RULES
Land and water:
Lumber and other forest products produced by Indian enterprises from forests on Indian reservations, sale; CFR part removed, 51723
Red Lake Indian Reservation, MN; forest products sale; CFR part removed, 51723–51724

**Interior Department**
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* Minerals Management Service
*See* National Park Service

**Internal Revenue Service**
RULES
Procedure and administration:
Retail food stores and wholesale food concerns; employer identification number sharing, 51724–51725

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Antidumping:
Chrome-plated lug nuts from—
China; correction, 51835
Large power transformers from—
Japan, 51776–51777
Antidumping and countervailing duties:
Aluminum sulfate from—
Venezuela, 51775–51776
*Applications, hearings, determinations, etc.:*
Georgia State University, 51777
University of—
Rhode Island, 51777–51778

**International Trade Commission**
PROPOSED RULES
Practice and procedure:
Uruguay Round Agreements Act (URAA):
Antidumping and countervailing duties investigations and reviews; conformance, 51748–51760
NOTICES
Import investigations:
Manganese metal from—
China, 51808

**Justice Department**
*See* Antitrust Division

**Labor Department**
*See* Labor Statistics Bureau
*See* Wage and Hour Division

**Labor Statistics Bureau**
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 51817–51818

**Land Management Bureau**
RULES
Public land orders:
Colorado, 51734–51735

**Minerals Management Service**
NOTICES
Environmental statements; availability, etc.:
Pacific OCS—
Three-dimensional (3–D) seismic survey, 51806–51807

**National Aeronautics and Space Administration**
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic fund transfers; payments, 51766–51769

**National Bankruptcy Review Commission**
NOTICES
Meetings, 51818–51819

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
International Advisory Panel, 51819
President's Committee on Arts and Humanities, 51819

**National Institutes of Health**
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 51803–51804
National Institute of Allergy and Infectious Diseases, 51804
National Institute of Diabetes and Digestive and Kidney Diseases, 51804
National Institute on Deafness and Other Communication Disorders, 51804
Research Grants Division Advisory Committee, 51805
Research Grants Division special emphasis panel, 51805

**National Oceanic and Atmospheric Administration**
RULES
Pacific Halibut Commission, International:
Pacific halibut fisheries, 51735–51736

**National Park Service**
NOTICES
National Register of Historic Places:
Pending nominations, 51807
Realty actions; sales, leases, etc.:
New York, 51807–51808

**National Science Foundation**
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 51819–51820

**Navy Department**
NOTICES
Environmental statements; availability, etc.:
SEAWOLF class submarines; homeporting and pre-acceptance trials on U.S. East Coast—
Access channel safety; dredging, 51782–51785

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Cleveland Electric Illuminating Co. et al., 51820–51821
Meetings:
Reactor Safeguards Advisory Committee, 51821
Meetings; Sunshine Act, 51833–51834
*Applications, hearings, determinations, etc.:*
Cleveland Electric Illuminating Co. et al., 51821–51822
Toledo Edison Co., 51822

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Personnel Management Office**
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 51822–51823
National Partnership Council, 51823

**Postal Rate Commission**
NOTICES
Post office closings; petitions for appeal:
Lynch, MD, 51823–51824
Macon, VA, 51824

**Presidential Advisory Committee on Gulf War Veterans' Illnesses**
NOTICES
Meetings, 51824

**Presidential Documents**
EXECUTIVE ORDERS
Continuance of certain Federal advisory committees (EO 12974), 51875–51876

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health

**Research and Special Programs Administration**
NOTICES
Meetings:
International standards on transport of dangerous goods, 51832

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 51824–51825
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 51825–51831

**State Department**
RULES
Organization, functions, and authority delegations:
Notarizing officers, 51719–51723
PROPOSED RULES
Nationality and passports:
Passports for minors, 51760–51762

**Thrift Depositor Protection Oversight Board**
NOTICES
Meetings:
National Advisory Board, 51831

**Trade Representative, Office of United States**
NOTICES
Caribbean Basin Economic Recovery Act; beneficiary countries, government procurement of products; preferential treatment renewal, 51822

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Research and Special Programs Administration

**Treasury Department**
*See* Internal Revenue Service

**Wage and Hour Division**
RULES
Federal service contracts; labor standards, 51725–51727

---

**Separate Parts In This Issue**

**Part II**
Department of Housing and Urban Development, 51838

**Part III**
Department of Housing and Urban Development, 51840–51848

**Part IV**
Department of Transportation, Federal Aviation Administration, 51850–51851

**Part V**
Department of Transportation, Federal Aviation Administration, 51854–51871

**Part VI**
The President, 51875–51876

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

**Electronic Bulletin Board**

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Executive Orders:**

11145 (Continued by EO 12974).....78175
11183 (Continued by EO 12974).....78175
11287 (Continued by EO 12974).....78175
11776 (Continued by EO 12974).....78175
12131 (Continued by EO 12974).....78175
12196 (Continued by EO 12974).....78175
12216 (Continued by EO 12974).....78175
12345 (Continued by EO 12974).....78175
12367 (Continued by EO 12974).....78175
12382 (Continued by EO 12974).....78175
12844 (Revoked in part by EO 12974).....78176
12869 (Superseded by EO 12974).....78176
11871 (Continued by EO 12974).....78175
11876 (Continued by EO 12974).....78175
12878 (Revoked by EO 12974).....78176
12882 (Continued by EO 12974).....78175
12887 (See EO 12974).....78176
12900 (Continued by EO 12974).....78175
12905 (Continued by EO 12974).....78175
12912 (See EO 12974).....78176
12974.....78175

**5 CFR**

2608.....51667
2612.....51667
2635.....51667

**7 CFR**

810.....51667
982.....51668

**Proposed Rules:**

1280.....51737

**12 CFR**

229.....51669

**14 CFR**

39 (5 documents) .....51703, 51705, 51707, 51709, 51713
61.....51850
63.....51850
65.....51850
97 (2 documents) .....51715, 51717
107.....51854
108 (2 documents) .....51850, 51854
121.....51850
135.....51850

**Proposed Rules:**

71.....51747

**19 CFR**

**Proposed Rules:**

201.....51748
207.....51748

**21 CFR**

522.....51718

**22 CFR**

92.....51719

**Proposed Rules:**

51.....51760

**25 CFR**

164.....51723
165.....51723

**26 CFR**

301.....51724

**29 CFR**

4.....51725

**Proposed Rules:**

1625.....51762

**32 CFR**

**Proposed Rules:**

321.....51764

**33 CFR**

117 (5 documents) .....51727, 51728, 51729, 51730, 51732
164.....51733

**40 CFR**

**Proposed Rules:**

302.....51765
355.....51765

**43 CFR**

**Public Land Orders:**

7163.....51734

**48 CFR**

**Proposed Rules:**

32.....51766
52.....51766

**50 CFR**

301.....51735

# Rules and Regulations

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 1995

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

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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Parts 2608, 2612 and 2635

**RIN 3209–AA04**

### Removal of Two Previously Reserved Parts No Longer Needed and Correction of One Regulatory Citation

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Office of Government Ethics is removing two previously reserved parts, which it has determined are no longer needed, from OGE's chapter of the Code of Federal Regulations. In addition, OGE is correcting one citation in its executive branch standards of ethical conduct regulation.

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

**FOR FURTHER INFORMATION CONTACT:** William E. Gressman, Office of Government Ethics, telephone: 202–523–5757, FAX: 202–523–6325.

**SUPPLEMENTARY INFORMATION:** In accordance with Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, OGE has reviewed its own internal regulations and directives not mandated by law or necessary for the provision of essential services in order to achieve at least a 50% reduction of unnecessary issuances. As part of that review, OGE has determined that two previously reserved parts in its chapter XVI of 5 CFR are unnecessary and should be removed. The two parts are 5 CFR part 2608, ''Rules of practice'' [Reserved], and part 2612, ''Use of penalty mail in the location and recovery of missing children'' [Reserved]. As a small agency, the Office of Government Ethics does not have a need for internal regulations on these two subjects.

In this rulemaking document, the Office of Government Ethics is also correcting one out-of-date citation, to General Services Administration regulations on frequent traveler benefits, in the OGE executive branchwide standards of ethical conduct regulation as codified in a note following 5 CFR 2635.203(b)(7).

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these minor revisions. The notice and delayed effective date are being waived because these technical amendments and correction to certain OGE regulations concern matters of agency organization, practice and procedure and because it is in the public interest that the obsolete parts be removed and that the one citation be updated as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments and corrections have not been reviewed by the Office of Management and Budget under that Executive order, as they deal with agency organization, management and personnel matters and are not, in any event, deemed ''significant'' thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this technical amendments rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: September 25, 1995.

Stephen D. Potts,

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Office of Government Ethics is amending chapter XVI of 5 CFR by removing parts 2608 and 2612, which were previously reserved, and by amending part 2635 as follows:

### PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

**§ 2635.203(b)(7), note [Amended]**

2. In the last sentence of the note following § 2635.203(b)(7), the citation ''41 CFR 301–1.6(b)'' is revised to read ''41 CFR 301–1.103 (b) and (f)''.

[FR Doc. 95–24564 Filed 10–2–95; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### 7 CFR Part 810

### Special Grade Designations

*CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 700 to 899, revised as of January 1, 1995, on page 565, § 810.108 was inadvertently removed. The correct text of the section as published in title 7 revised as of January 1, 1988, reads as follows:

**§ 810.108 Special grade designations.**

Special grade designations are shown as prescribed in § 810.106. Multiple special grade designations will be listed in alphabetical order. In the case of treated wheat, the official certificate shall show whether the wheat has been scoured, limed, washed, sulfured, or otherwise treated.

BILLING CODE 1505–01–D

## Agricultural Marketing Service

## 7 CFR Part 982

**[Docket No. FV95–982–1FIR]**

## Filberts/Hazelnuts Grown in Oregon and Washington; Expenses and Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 982 for the 1995–96 marketing year. Authorization of this budget enables the Filbert/Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** July 1, 1995, through June 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington filberts/hazelnuts are subject to assessments. Funds to administer the Oregon-Washington filbert/hazelnut order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable filberts/hazelnuts during the 1995–96 marketing year which began July 1, 1995, and ends June 30, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 1,000 producers of Oregon and Washington filberts/hazelnuts under this marketing order, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon and Washington filbert/hazelnut producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 marketing year was prepared by the Filbert/Hazelnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by the expected quantity of assessable filberts/hazelnuts handled. Because that rate will be applied to the actual quantity of filberts/hazelnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board, in a mail vote conducted last April, unanimously recommended a 1995–96 budget of $483,685, $23,325 less than the previous year. Budget items for 1995–96 which had increased compared to those budgeted for 1994–95 (in parentheses) are: Personal services (salaries), $50,735 ($48,000), postage, $3,000 ($1,800), communications, $1,200 ($1,100), printing and publishing, $2,400 ($2,300), insurance, $700 ($650), rent, $5,650 ($5,560), utilities, $850 ($800), equipment maintenance and rental, $1,500 ($1,400), and office supplies, $2,000 ($1,500). Items which had decreased compared to those budgeted for 1994–95 (in parentheses) are: Computer services, $750 ($1,500), furniture, $250 ($1,500), equipment, $250 ($1,500), and research ($25,000) for which no funding was recommended this year. All other items were budgeted at last year's amounts, including $250,000 for promotion.

The Board also unanimously recommended an assessment rate of $0.007 per pound, the same as last year. At the time of the mail vote, assessable shipments were estimated at 60,000,000 pounds. This rate, when applied to anticipated shipments of 60,000,000 pounds, yields $420,000 in assessment income. This, along with $5,000 in interest income, $2,572 from the Nut Growers Society in payment for services performed by the Board under an agreement with the Society, and $56,113 from the Board's authorized reserve, was adequate to cover budgeted expenses. Funds in the reserve as of July 31, 1995, were $286,673, which is within the maximum permitted by the order of one marketing year's expenses.

An interim final rule was published in the Federal Register on August 7, 1995 (60 FR 40061). That interim final rule added § 982.339 to authorize expenses and establish an assessment rate for the Board. That rule provided that interested persons could file written comments through September 6, 1995. The manager informed the Department of the Board's August 28, 1995, meeting recommendation to increase the level of authorized expenses.

Subsequent to the recommendation of the initial budget, a new Board employee was hired, necessitating increased funding for personal services. At its August 28, 1995, meeting the Board recommended this increase, plus changes in five other line item categories. Budget items for 1995–96, which have increased compared to the interim budget (in parentheses) are: Personal services, $60,735 ($50,735), auditing, $4,000 ($3,500), furniture, $750 ($250), equipment, $2,250 ($250), and emergency fund $202,800 ($140,000). The item which has decreased compared to the interim budget (in parentheses) is: Promotion, $244,200 ($250,000). These changes will result in a total budget of $553,685, $70,000 more than the interim budget, and $46,675 more than the 1994–95 budget.

Based on current crop information, the Board anticipates a 10,000,000 pound increase in assessable shipments to 70,000,000 pounds. This will result in an additional $70,000 in assessment income. As a consequence, total assessment income will total $490,000. This together with funds from the sources mentioned earlier will provide adequate funds to cover the increased expenses, so no change in the assessment rate was recommended.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on July 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable filberts/hazelnuts handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Board in a mail vote, published in the Federal Register as an interim final rule, and subsequently reviewed at a public meeting.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

Accordingly, the interim final rule adding § 982.339 which was published at 60 FR 40061 on August 7, 1995, is adopted as a final rule with the following change:

## PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.339 is revised to read as follows:

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

**§ 959.339 Expenses and assessment rate.**

Expenses of $553,685 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate of $0.007 per pound of assessable filberts/hazelnuts is established for the marketing year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: September 27, 1995.

Sharon Bomer Lauritsen,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–24571 Filed 10–2–95; 8:45 am]

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 229

**[Regulation CC; Docket No. R–0895]**

## Availability of Funds and Collection of Checks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Board is publishing technical amendments to Regulation CC to correct errors, delete obsolete provisions, and facilitate the usefulness of the commentary. The Board's Regulation CC implements the Expedited Funds Availability Act and requires banks to make funds deposited into transaction accounts available for withdrawal within specified time frames.

**EFFECTIVE DATE:** November 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Louise Roseman, Associate Director (202/452–2789), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452–3198), Legal Division; Manley Williams, Staff Attorney, (202/736–5565), Division of Consumer and Community Affairs. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Board's Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and requires banks [1] to make funds deposited into transaction accounts available for withdrawal within specified time frames. Regulation CC also contains disclosure requirements, as well as rules governing the check collection and return process.

The Board is publishing technical amendments to Regulation CC to correct minor errors, delete obsolete provisions, and facilitate use of the Commentary by adding headings and paragraph numbers.

References to Temporary Schedule

Regulation CC provided temporary availability schedules that applied to checks deposited during the period from September 1, 1988, through August 31, 1990. The permanent availability schedule became effective on September 1, 1990. These technical amendments update the regulation, commentary, and model forms to remove obsolete references to the temporary schedule. For example, the definitions of ''check clearing association'' (§ 229.2(l)) and ''participant'' (§ 229.2(y)) were required only under the temporary schedule. Accordingly, the Board has removed those sections from the regulation and Commentary. The Commentary to § 229.12, discussing the permanent schedule, often referred back to the Commentary to § 229.11. As the Board is removing the Commentary to § 229.11, major portions of that Commentary have been incorporated into the Commentary to § 229.12. Throughout the regulation and appendices, the Board has removed references to the temporary availability schedule, and deleted the word

[1] The term *bank* refers to any depository institution, including commercial banks, savings institutions, and credit unions.

''permanent'' as a modifier of ''availability schedule.''

Transitional Provisions

The Board has removed references to the effective date of § 229.36(e), regarding labeling of payable-through checks. Those references were in the Commentary to §§ 229.2(r) and 229.36(e). Section 229.36(e) became effective on February 1, 1991.

The Board has also removed § 229.17(b) of the regulation and Commentary, as well as a sentence in the Commentary to § 229.18(a), which provided special disclosure rules for accounts in existence on the effective date of the regulation. These provisions are now obsolete.

Statutory Amendments

The definition of bank in Regulation CC is based on the definition of depository institution in section 19 of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Congress, in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA,'' Pub. L. No. 101–73, Title VII, section 744(i)(2), 103 Stat. 439 (1989)), amended the definition of depository institution. The Board has amended Regulation CC accordingly. In addition, in the Commentary to § 229.2(t), the Board is removing a reference to section 408 of the National Housing Act, which was repealed in FIRREA.

In 1991, the Expedited Funds Availability Act was amended to treat all deposits to nonproprietary automated teller machines as nonlocal (*see* the Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102–242, section 227, 105 Stat. 2236 (1991)). The Board amended Regulation CC and revised the Commentary accordingly (57 FR 36599, Aug. 14, 1992). As published, the revisions to the Commentary to § 229.12(f) contain an error, which the Board has corrected. In addition, the Board has amended the definition of local paying bank in § 229.2(s) and the corresponding Commentary, as well as the Commentary to § 229.10, to reflect this statutory amendment.

The Uniform Commercial Code, section 4–202(b), was amended in 1990 to refer to a bank's duty to exercise ordinary care and timeliness rather than a duty to act ''seasonably.'' The Board has amended the Commentary to §§ 229.2(cc) and 229.31(a) accordingly.

The New Mexico funds availability law was repealed, effective June 16, 1989. The Board is removing the preemption determination for New Mexico in Appendix F.

Citations

The Board amended Regulation J (12 CFR part 210, 55 FR 4079, October 5, 1990) effective in 1991, rendering the citation to Regulation J in the Commentary to § 229.10(b) incorrect. In addition, the Commentary to § 229.36(b) contains an incorrect cite in the second sentence. The Board has corrected those Commentary citations, as well as an incorrect citation in § 229.2(11) of the regulation.

Thomson Financial Publishing Inc. now publishes the guide referred to in the Commentary to §§ 229.2(dd), 229.32(a), and 229.36(b) and in Appendix A. The Board has revised those provisions accordingly.

Commentary Reformat

The Board has revised the Commentary (Appendix E) by numbering each paragraph and adding headings where appropriate. These revisions will provide a consistent format within the Commentary and should make the Commentary easier to use.

Public Comment Waiver

The amendments to Regulation CC and its Commentary are not substantive, but rather remove obsolete provisions, correct minor errors, conform the regulation to statutory changes, and reorganize existing provisions. The Board finds that public comment on these changes is unnecessary and contrary to the public interest. Thus, the Board has determined that there is good cause for not following the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR Part 229 is amended as set forth below:

## PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for Part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.1, paragraph (b)(2) is revised to read as follows:

### § 229.1 Authority and purpose; organization.

* * * * *

(b) * * *

(2) Subpart B of this part contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal, including availability schedules. Subpart B of this part also contains rules regarding exceptions to the schedules, disclosure of funds availability policies, payment of interest, liability of banks for failure to comply with Subpart B of this part, and other matters.

* * * * *

3. In § 229.2,

a. Paragraph (e)(6) is revised;

b. Paragraph (l) is removed and reserved;

c. Paragraph (s) is revised;

d. Paragraph (y) is removed and reserved; and

e. Paragraph (ll) is revised.

The revisions read as follows:

### § 229.2 Definitions.

* * * * *

(e) * * *

(6) A *savings association* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution as defined in section 3 of that Act (12 U.S.C. 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that Act (12 U.S.C. 1815); or

* * * * *

(l) [Reserved]

* * * * *

(s) *Local paying bank* means a paying bank that is located in the same check processing region as the physical location of the branch or proprietary ATM of the depositary bank in which that check was deposited.

* * * * *

(y) [Reserved]

* * * * *

(ll) *Wire transfer* means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. *Wire transfer* does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

* * * * *

4. In § 229.12, the section heading and paragraph (a) are revised to read as follows:

### § 229.12 Availability schedule.

(a) *Effective date.* The availability schedule contained in this section is effective September 1, 1990.

* * * * *

5. In § 229.13,

a. Introductory text is added to paragraph (a);

b. Paragraph (a)(1)(iii) is revised; and

c. The undesignated text after paragraph (a)(1)(iii) is removed.

The addition and revision read as follows:

**§ 229.13 Exceptions.**

(a) *New accounts.* For purposes of this paragraph, checks subject to § 229.10(c)(1)(v) include traveler's checks.

(1) * * *

(iii) Is not subject to the availability requirements of §§ 229.10(c)(1)(vi) and (vii) and 229.12.

* * * * *

6. In § 229.16, footnote 1 in paragraph (b)(2) is revised to read as follows:

**§ 229.16 Specific availability policy disclosure.**

* * * * *

(b) * * *

(2) * * * [1]

* * * * *

7. Section 229.17 is revised to read as follows:

**§ 229.17 Initial disclosures.**

Before opening a new account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

8. In § 229.19, paragraphs (b) introductory text, (c)(4)(i), (e)(1)(ii) and (e)(2)(ii) are revised to read as follows:

**§ 229.19 Miscellaneous.**

* * * * *

(b) *Availability at start of business day.* Except as otherwise provided in § 229.12(d), if any provision of this subpart requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of:

* * * * *

(c) * * *

(4) * * *

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.12, or 229.13; and

* * * * *

(e) * * *

(1) * * *

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(2) * * *

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

* * * * *

9. In § 229.36, paragraph (e) is revised and the undesignated paragraph following paragraph (e)(2) is removed. The revision reads as follows:

**§ 229.36 Presentment and issuance of checks.**

* * * * *

(e) *Issuance of payable-through checks.* (1) A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

(i) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and

(ii) The words ''payable through'' followed by the name and location of the payable-through bank.

(2) A bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

* * * * *

10. In Appendix A to Part 229:

a. The appendix heading is revised;

b. The first and second undesignated paragraphs are revised;

c. Under the heading SECOND FEDERAL RESERVE DISTRICT and the subheading *East Rutherford Office,* the number ''0270'' is removed; and

d. Under the heading FEDERAL HOME LOAN BANKS the numbers ''0215 0212 1'' and ''0530 1174 5'' are removed. The revisions read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

A. Each bank is assigned a routing number by Thomson Financial Publishing Inc., as agent for the American Bankers Association. The routing number takes two forms: A fractional form and a nine-digit form. A paying bank generally is identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank.

B. The first four digits of the nine-digit routing number and the denominator of the fractional routing number form the ''Federal Reserve routing symbol,'' which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank.

* * * * *

Appendix B–1 to Part 229 [Removed]

11. Appendix B–1 to Part 229 is removed.

12. Appendix B–2 to Part 229 is redesignated Appendix B and the appendix heading is revised to read as follows:

Appendix B to Part 229—Reduction of Schedules for Certain Nonlocal Checks

* * * * *

13. In Appendix C to Part 229,

a. The appendix heading is revised;

b. The contents listing following the introductory text is revised;

c. Model Forms C–4 and C–6 and Model Clauses C–11 and C–11A are removed;

d. Model Forms, Clauses, and Notices are redesignated as indicated in the following table:

| Old | New |
|---|---|
| C–5 | C–4 |
| C–7 | C–5 |
| C–8 | C–6 |
| C–8A | C–7 |
| C–9 | C–8 |
| C–10 | C–9 |
| C–11B | C–10 |
| C–12 | C–11 |
| C–13 | C–12 |
| C–13A | C–13 |
| C–13B | C–14 |
| C–13C | C–15 |
| C–14 | C–16 |
| C–15 | C–17 |
| C–15A | C–18 |
| C–16 | C–19 |
| C–17 | C–20 |
| C–18 | C–21 |

e. The words ''(permanent schedule)'', ''permanent schedule,'', ''(Permanent Schedule)'', and ''Permanent Schedule,'' are removed each place they appear.

The revisions read as follows:

Appendix C to Part 229—Model Forms, Clauses, and Notices

* * * * *

[1] A bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.12 and 229.13 is not required to provide this disclosure on payable-through checks to its customers. The statement concerning payable-through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks.

*Model Specific Policy Disclosure Forms*

C–1 Next-day availability
C–2 Next-day availability and § 229.13 exceptions
C–3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions
C–4 Holds to statutory limits on all deposits (includes chart)
C–5 Holds to statutory limits on all deposits

*Model Clauses*

C–6 Holds on other funds (check cashing)
C–7 Holds on other funds (other account)
C–8 Appendix B availability (nonlocal checks)
C–9 Automated teller machine deposits (extended hold)
C–10 Cash withdrawal limitation
C–11 Credit union interest payment policy

*Model Notices*

C–12 Exception hold notice
C–13 Reasonable cause hold notice
C–14 One-time notice for large deposit and redeposited check exception holds
C–15 One-time notice for repeated overdraft exception holds
C–16 Case-by-case hold notice
C–17 Notice at locations where employees accept consumer deposits
C–18 Notice at locations where employees accept consumer deposits (case-by-case holds)
C–19 Notice at automated teller machines
C–20 Notice at automated teller machines (delayed receipt)
C–21 Deposit slip notice

* * * * *

14. Appendix E to Part 229 is revised to read as follows:

## Appendix E to Part 229—Commentary

*I. Introduction*

A. Background

1. The Board interpretations, which are labeled ''Commentary'' and follow each section of Regulation CC (12 CFR Part 229), provide background material to explain the Board's intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)), no provision of section 611 imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. The Commentary is an ''interpretation'' of a regulation by the Board within the meaning of section 611.

*II. Section 229.2 Definitions*

A. Background

1. Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 U.S.C. 4001). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the Act, and to carry out the purposes of the Act. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC's definitions are self-explanatory and therefore are not discussed in this Commentary.

B. 229.2(a) Account

1. The Act defines account to mean ''a demand deposit account or similar transaction account at a depository institution.'' The regulation defines account in terms of the definition of transaction account in the Board's Regulation D (12 CFR part 204). The definition of account in Regulation CC, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of transaction account in Regulation D. The definition applies to accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the Act, which suggests that the Act is intended to apply only to accounts that permit unlimited third party transfers.

2. The term account also differs from the definition of transaction account in Regulation D because the term account refers to accounts held at banks. Under Subparts A and C, the term bank includes not only any depository institution, as defined in the Act, but also any person engaged in the business of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus, accounts at these institutions benefit from the expeditious return requirements of Subpart C.

3. Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan Deposit Accounts) are exempt from Regulation CC.

C. 229.2(b) Automated Clearinghouse (ACH)

1. The Board has defined automated clearinghouse as a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing automated clearinghouse items or the rules of an ACH association. ACH credit transfers are included in the definition of electronic payment.

2. The reference to ''debit and credit transfers'' does not refer to the corresponding debit and credit entries that are part of the same transaction, but to different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator's account to be credited.

3. A facility that handles only wire transfers (defined elsewhere) is not an ACH.

D. 229.2(c) Automated Teller Machine (ATM)

1. ATM is not defined in the Act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM.

2. A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

E. 229.2(d) Available for Withdrawal

1. Under this definition, when funds become available for withdrawal, the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer's account under the customer's account agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic payments, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (e.g., 18 U.S.C. 1004; 12 U.S.C. 331).

2. If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraw the customer's account and be returned for insufficient funds) before the funds must be made available under the bank's policy or this regulation, it may nevertheless apply a hold consistent with this regulation to those funds for other purposes (such as cash withdrawals). For purposes of this regulation, funds are considered available for withdrawal even though they are being held by the bank to satisfy an obligation of the customer other than the customer's potential liability for the return of the check. For example, funds are available for withdrawal even though they are being held by a bank to satisfy a garnishment, tax levy, or court order restricting disbursements from the account, or to satisfy the customer's liability arising from the certification of a check, sale of a cashier's or teller's check, guaranty or acceptance of a check, or similar transaction.

F. 229.2(e) Bank

1. The Act uses the term depository institution, which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i) through (vi)). This regulation uses the term bank, a term that conforms to the usage the Board has previously adopted in Regulation J. Bank is also used in Articles 4 and 4A of the Uniform Commercial Code.

2. Bank is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the Act, and U.S. branches and agencies of foreign banks. For purposes of Subpart B, the term does not include corporations organized under section 25A of the Federal Reserve Act, 12 U.S.C. 611–631 (Edge corporations) or corporations having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act, 12 U.S.C. 601–604a (agreement corporations). For purposes of Subpart C, and in connection therewith, Subpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase ''any other person engaged in the business of banking'' is derived from U.C.C. 1–201(4), and is intended to cover entities that handle checks for collection and payment, such as Edge and agreement corporations, commercial lending companies under 12 U.S.C. 3101, certain industrial banks, and private bankers, so that virtually all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of Subpart B. For the purposes of Subpart C, and in connection therewith, Subpart A, the term also may include a state or a unit of general local government to the extent that it pays warrants or other drafts drawn directly on the state or local government itself, and the warrants or other drafts are sent to the state or local government for payment or collection.

3. Unless otherwise specified, the term bank includes all of a bank's offices in the United States. The regulation does not cover foreign offices of U.S. banks.

G. 229.2(f) Banking Day and (g) Business Day

1. The Act defines business day as any day excluding Saturdays, Sundays, and legal holidays. Legal holiday, however, is not defined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the Act's definition difficult to apply. The Board believes that two kinds of business days are relevant. First, when determining the day when funds are deposited or when a bank must perform certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or when notice of nonpayment must be received by the depositary bank, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: Business day generally follows the standard Federal Reserve Bank holiday schedule (which is followed by most large banks), and banking day is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

2. The definition of banking day corresponds to the definition of banking day in U.C.C. 4–104(a)(3), except that a banking day is defined in terms of a business day. Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a business day under the regulation.

3. The definition of banking day is phrased in terms of when ''an office of a bank is open'' to indicate that a bank may observe a banking day on a per-branch basis. A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. All other deposits are considered made at the branch at which the deposit is received. For example, under § 229.19(a)(1), funds deposited at an ATM are considered deposited at the time they are received at the ATM. On a calendar day that is a banking day for the branch or other location of the depositary bank at which the account is maintained, a deposit received at an ATM before the ATM's cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered deposited on that location's next banking day. This rule for determining the day of deposit also would apply to a deposit to an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under § 229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

H. 229.2(h) Cash

1. Cash means U.S. coins and currency. The phrase in the Act ''including Federal Reserve notes'' has been deleted as unnecessary. (See 31 U.S.C. 5103.)

I. 229.2(i) Cashier's Check

1. The regulation adds to the second item in the Act's definition of cashier's check the phrase, ''on behalf of the bank as drawer,'' to clarify that the term cashier's check is intended to cover only checks that a bank draws on itself. The definition of cashier's check includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by noncustomers for remittance purposes, such as certain loan disbursement checks. Cashier's checks provided to customers or others are often labeled as ''cashier's check,'' ''officer's check,'' or ''official check.'' The definition excludes checks that a bank draws on itself for other purposes, such as to pay employees and vendors, and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Cashier's checks generally are sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are cashier's checks as defined by this regulation.

J. 229.2(j) Certified Check

1. The Act defines a certified check as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (U.C.C. 3–409). The regulation defines certified check to include both the Act's and U.C.C.'s definitions.

K. 229.2(k) Check

1. Check is defined in section 602(7) of the Act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The regulation includes six categories of instruments within the definition of check.

2. The first category is negotiable demand drafts drawn on, or payable through or at, an office of a bank. As the definition of bank includes only offices located in the United States, this category is limited to checks drawn on, or payable through or at, a banking office located in the United States.

3. The Act treats drafts payable through a bank as checks, even though under the U.C.C. the payable-through bank is a collecting bank to make presentment and generally is not authorized to make payment (U.C.C. 4–106(a)). The Act does not expressly address items that are payable at a bank. This regulation treats both payable-through and payable-at demand drafts as checks. The Board believes that treating demand drafts payable at a bank as checks will not have a substantial effect on the operations of payable-at banks—by far the largest proportion of payable-at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, bankers' acceptances, and securities. These time items are not covered by the requirements of the Act or this regulation. (The treatment of payable-through drafts is discussed in greater detail in connection with the definitions of local check and paying bank.)

4. The second category is checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Principal and interest payments on federal debt instruments often are paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States, and these fiscal agency checks are indistinguishable from other checks drawn on Federal Reserve Banks. (See 31 CFR Part 355.) Federal Reserve Bank checks also are used by some banks as substitutes for cashier's or teller's checks. Similarly, savings and loan associations often use checks drawn on Federal Home Loan Banks as teller's checks. The definition of check includes

checks drawn on Federal Home Loan Banks and Federal Reserve Banks because in many cases they are the functional equivalent of Treasury checks or teller's checks.

5. The third and fourth categories of instrument included in the definition of check refer to government checks. The Act refers to checks drawn on the U.S. Treasury, even though these instruments are not drawn on or payable through an office of a depository institution, and checks drawn by state and local governments. The Act also gives the Board authority to define functionally equivalent instruments as depository checks.[1] Thus, the Act is intended to apply to instruments other than those that meet the strict definition of check in section 602(7) of the Act. Checks and warrants drawn by states and local governments often are used for the purposes of making unemployment compensation payments and other payments that are important to the recipients. Consequently, the Board has expressly defined check to include drafts drawn on the U.S. Treasury and drafts or warrants drawn by a state or a unit of general local government on itself.

6. The fifth category of instrument included in the definition of check is U.S. Postal Service money orders. These instruments are defined as checks because they often are used as a substitute for checks by consumers, even though money orders are not negotiable under Postal Service regulations. The Board has not provided specific rules for other types of money orders; these instruments generally are drawn on or payable through or payable at banks and are treated as checks on that basis.

7. The sixth and final category of instrument included in the definition of check is traveler's checks drawn on or payable through or at a bank. Traveler's check is defined in paragraph (hh) of this section.

8. Finally, for the purposes of Subpart C, and in connection therewith, Subpart A, the definition of check includes nonnegotiable demand drafts because these instruments are often handled as cash items in the forward collection process.

9. The definition of check does not include an instrument payable in a foreign currency (i.e., other than in United States money as defined in 31 U.S.C. 5101) or a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. The definition of check includes a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card.

L. 229.2(l) [Reserved]

M. 229.2(m) Check Processing Region

1. The Act defines this term as ''the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.'' The Board has defined check processing region as the territory served by one of the 46 Federal Reserve head offices, branches, or regional check processing centers. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office. The definition of check processing region is key to determining whether a check is considered local or nonlocal.

N. 229.2(n) Consumer Account

1. Consumer account is defined as an account used primarily for personal, family, or household purposes. An account that does not meet the definition of consumer account is a nonconsumer account. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specified disclosures of its availability policies. Section 229.18(b) (notices at branch locations) and § 229.18(e) (notice of changes in policy) apply only to consumer accounts. Section 229.13(g)(2) (one-time exception notice) and § 229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

O. 229.2(o) Depositary Bank

1. The regulation uses the term depositary bank rather than the term receiving depository institution. Receiving depository institution is a term unique to the Act, while depositary bank is the term used in Article 4 of the U.C.C. and Regulation J.

2. A depositary bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depositary bank because foreign offices of banks are not included in the definition of bank.

3. If a customer deposits a check in its account at a bank, the customer's bank is the depositary bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depositary bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depositary bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depositary bank. For the purposes of Subpart C, the bank applying its indorsement as the depositary bank indorsement on the check is the depositary bank.)

4. For purposes of Subpart B, a bank may act as both the depositary bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank also is considered a depositary bank with respect to checks it receives as payee. For example, a bank is a depositary bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be ''deposited to accounts,'' they would not be subject to the availability or disclosure requirements of Subpart B.

P. 229.2(p) Electronic Payment

1. Electronic payment is defined to mean a wire transfer as defined in § 229.2(11) or an ACH credit transfer. The Act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term wire transfer to the Board. Because ACH credit transfers frequently involve important consumer payments, such as wages, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

2. ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which generally would be able to negotiate with their banks for prompt availability.

3. A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

Q. 229.2(q) Forward Collection

1. Forward collection is defined to mean the process by which a bank sends a check to the paying bank for payment as distinguished from the process by which the check is returned after nonpayment. Noncash collections are not included in the term forward collection.

R. 229.2(r) Local Check

1. Local check is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable-through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on the bank to which it is sent for payment. Generally, the depositary bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable-through bank, not the paying bank. Many credit union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. For payable-through checks that meet the labeling requirements of § 229.36(e), the depositary bank may rely on the four-digit routing symbol of the paying bank that is printed on the face of the check as required by that section, e.g., in the title plate, but not

[1] Section 602(11) of the Act (12 U.S.C. 4001(11)) defines ''depository check'' as ''any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.''

on the first four digits of the payable-through bank's routing number printed in magnetic ink in the MICR line or in fractional form, to determine whether the check is local or nonlocal.

S. 229.2(s) Local Paying Bank

1. Local paying bank is defined as a paying bank located in the same check processing region as the branch or proprietary ATM of the depositary bank.

2. Examples.

a. If a check that is payable by a bank that is located in the same check processing region as the depositary bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

b. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depositary bank located in one check processing region sends a check to the depositary bank's central facility in another check processing region, and the central facility is in the same check processing region as the paying bank, the check is still considered nonlocal. (See Commentary on definition of paying bank.)

T. 229.2(t) Merger Transaction

1. Merger transaction is a term used in Subparts B and C in connection with transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that usually must be approved under the Bank Merger Act (12 U.S.C. 1828(c)) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 U.S.C. 1842) where an acquired bank maintains its separate corporate existence.

2. Regulation CC adopts a one-year transition period for banks that are party to a merger transaction during which the merged banks will continue to be treated as separate entities. (See §§ 229.19(g) and 229.40.)

U. 229.2(u) Noncash Item

1. The Act defines the term check to exclude noncash items, and defines noncash items to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classified as a noncash item in the Board's regulation. To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item by the depositary bank.

2. The regulation's definition of noncash item also includes checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check processing equipment, e.g. those placed in carrier envelopes) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank's routing number, as well as checks with documents attached or accompanied by special instructions. (In the context of this definition, paying bank refers to the paying bank as defined for purposes of Subpart C.)

3. A check that has been preprinted or post-encoded with a routing number that has been retired (e.g., because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes by placing the check in an encoded carrier envelope or adding a strip to the check.

4. Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depositary bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depositary bank promptly when the check is paid or dishonored.

5. For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (See §§ 229.30(f) and 229.31(f).)

V. 229.2(v) [Reserved]

W. 229.2(w) [Reserved]

X. 229.2(x) [Reserved]

Y. 229.2(y) [Reserved]

Z. 229.2(z) Paying Bank

1. The regulation uses this term in lieu of the Act's ''originating depository institution.'' For purposes of Subpart B, the term paying bank includes the payor bank, the payable-at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of Subpart C, the term includes the payable-through bank and the bank whose routing number appears on the check regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable-through bank or the bank whose routing number appears on the check.

2. Under §§ 229.30 and 229.36(a), a bank designated as a payable-through bank or payable-at bank and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depositary banks. Subpart C places on payable-through and payable-at banks the requirements of expeditious return based on the time the payable-through or payable-at bank received the check for forward collection.

3. If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

4. The phrase ''and to which [the check] is sent for payment or collection'' includes sending not only the physical check, but information regarding the check under a truncation arrangement.

5. Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

AA. 229.2(aa) Proprietary ATM

1. All deposits at nonproprietary ATMs are treated as deposits of nonlocal checks, and deposits at proprietary ATMs generally are treated as deposits at banking offices. The Conference Report on the Act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because ''nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits'' (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depositary bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

2. A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion in determining whether the ATM is proprietary to that bank. Because a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the ''owns or operates'' criterion, the ATM is considered proprietary to the bank that operates it. For the purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

3. The Act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Because the Act also defines a proprietary ATM as one that is ''in close proximity'' to the bank, the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The Board believes that the statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. The Board believes that an ATM located within 50 feet of a banking office

would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

BB. 229.2(bb) Qualified Returned Check

1. Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner. The banks may meet this responsibility by returning a check to the depositary bank by the same general means used for forward collection of a check from the depositary bank to the paying bank. One way to speed the return process is to prepare the returned check for automated processing. Returned checks can be automated by either the paying bank or a returning bank by placing the returned check in a carrier envelope or by placing a strip on the bottom of the returned check and encoding the envelope or strip with the routing number of the depositary bank, the amount of the check, and a special return identifier. Returned checks are identified by placing a ''2'' in position 44 of the MICR line. (See American National Standards Committee on Financial Services, Specification for the Placement and Location of MICR Printing, X9.13 (Sept. 8, 1983) hereinafter referred to as ''ANSI X9.13–1983.'')

2. Generally, under the standard of care imposed by § 229.38, a paying or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check unless the error was due to problems with the depositary bank's indorsement. (See also discussion of § 229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the regulation.

3. A qualified returned check need not contain the elements of a check drawn on the depositary bank, such as the name of the depositary bank. Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.

CC. 229.2(cc) Returning Bank

1. Returning bank is defined to mean any bank (excluding the paying bank and the depositary bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depositary bank under § 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to exercise ordinary care under U.C.C. 4–202(b) and is analogous to a collecting bank for purposes of final settlement. (See Commentary to § 229.35(b).)

DD. 229.2(dd) Routing Number

1. Each bank is assigned a routing number by Thomson Financial Publishing Inc., as agent for the American Bankers Association. The routing number takes two forms—a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The nine-digit routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR strip; see ANSI X9.13–1983). Subpart C requires depositary banks and subsequent collecting banks to place their routing numbers in nine-digit form in their indorsements.

EE. 229.2(ee) [Reserved]

FF. 229.2(ff) [Reserved]

GG. 229.2(gg) Teller's Check

1. Teller's check is defined in the Act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition does not include checks that are drawn by a nonbank on a nonbank even if payable through or at a bank. The definition includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by a noncustomer for remittance purposes, such as certain loan disbursement checks. The definition excludes checks used by the bank to pay employees or vendors and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Teller's checks generally are sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are teller's checks as defined by this regulation.

HH. 229.2(hh) Traveler's Check

1. The Act and regulation require that traveler's checks be treated as cashier's, teller's, or certified checks when a new depositor opens an account. (See § 229.13(a); 12 U.S.C. 4003(a)(1)(C).) The Act does not define traveler's check.

2. One element of the definition states that a traveler's check is ''drawn on or payable through or at a bank.'' Traveler's checks that are not issued by banks may not have any words on them identifying a bank as drawee or paying agent, but may bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

3. Because a traveler's check is payable by, at, or through a bank, it is also a check for purposes of this regulation. When not subject to the next-day availability requirement for new accounts, a traveler's check should be treated as a local or nonlocal check depending on the location of the paying bank. The depositary bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.

II. 229.2(ii) Uniform Commercial Code

1. Uniform Commercial Code is defined as the version of the Code adopted by the individual states. For purposes of uniform citation, all citations to the U.C.C. in this part refer to the Official Text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

JJ. 229.2(jj) [Reserved]

KK. 229.2(kk) Unit of General Local Government

1. Unit of general local government is defined to include a city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units, such as school districts, water districts, or Indian nations.

LL. 229.2(ll) Wire Transfer

1. The Act delegates to the Board the authority to define the term wire transfer. The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary, upon receipt or on a day stated in the order, that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between commercial accounts. ''Unconditional'' means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means. ''Electronic means'' include computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Interbank Payments System, operated by the New York Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term wire transfer excludes electronic fund transfers as that term is defined by the Electronic Fund Transfer Act.

MM. 229.2(mm) [Reserved]

NN. 229.2(nn) Good Faith

1. This definition of good faith derives from U.C.C. 3–103(a)(4).

OO. 229.2(oo) Interest Compensation

1. This calculation of interest compensation derives from U.C.C. 4A–506(b). (See §§ 229.34(d) and 229.36(f).)

*III. Section 229.3 Administrative Enforcement [Reserved]*

*IV. Section 229.10 Next-Day Availability*

A. Business Days and Banking Days

1. This section, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of business days following the banking day on which the funds are deposited. Thus, a deposit is considered

made only on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day.

2. Nevertheless, business days are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a local check were made on a Monday, the availability schedule requires that funds be available for withdrawal on the second business day after deposit. Therefore, funds must be made available on Wednesday regardless of whether the bank was closed on Tuesday for other than a standard legal holiday as specified in the definition of business day.

B. 229.10(a) Cash Deposits

1. This paragraph implements the Act's requirement for next-day availability for cash deposits to accounts at a depositary bank ''staffed by individuals employed by such institution.'' [2] Under this paragraph, cash deposited in an account at a staffed teller station on a Monday must become available for withdrawal by the start of business on Tuesday. It must become available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM, or by other means other than at a staffed teller station.

C. 229.10(b) Electronic Payments

1. The Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term electronic payment, rather than wire transfer, to include both wire transfers and ACH credit transfers under the next-day availability requirement. (See discussion of definitions of automated clearinghouse, electronic payment, and wire transfer in § 229.2.)

2. The Act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of Fedwire, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.31.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

3. This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

4. The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH association rules and Treasury regulations (31 CFR part 210), which provide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

D. 229.10(c) Certain Check Deposits

1. The Act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks, state and local government checks, cashier's checks, certified checks, teller's checks, and ''on us'' checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits ''0000.'') This section also requires next-day availability for additional types of checks not addressed in the Act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders also must be made available on the first business day following the day of deposit under specified conditions. For the purposes of this section, all checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank that contain in the MICR line a routing number that is listed in Appendix A are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depositary bank, regardless of the purposes for which the checks were issued. For all new accounts, even if the new account exception is not invoked, traveler's checks must be included in the $5,000 aggregation of checks deposited on any one banking day that are subject to the next-day availability requirement. (*See* § 229.13(a).)

2. Deposit in Account of Payee. One statutory condition to receipt of next-day availability of Treasury checks, state and local government checks, cashier's checks, certified checks, and teller's checks is that the check must be ''endorsed only by the person to whom it was issued.'' The Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than a check deposited by the payee and that Congress did not intend to require next-day availability for such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

3. Deposits Made to an Employee of the Depositary Bank.

a. In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depositary bank. If the deposit is not made to an employee of the depositary bank on the premises of such bank, the proceeds of the deposit must be made available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section. For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM, night depository, through the mail or a lock box, or at a teller station staffed by a person who is not an employee of the depositary bank. Second-day availability also may be allowed for deposits picked up by an employee of the depositary bank at the customer's premises; such deposits would be considered made upon receipt at the branch or other location of the depositary bank.

b. In the case of Treasury checks, the Act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is deposited to an account of a payee of the check.

4. ''On Us'' Checks. The Act and regulation require next-day availability for ''on us'' checks, i.e., checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if both branches are located in the same state or check processing region. Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check processing region but in the same state as the branch in which the check is deposited. For the purposes of this requirement, deposits at facilities that are not located on the premises of a brick-and-mortar branch of the bank, such as off-premise ATMs and remote depositories, are not considered deposits made at branches of the depositary bank.

5. First $100.

a. The Act and regulation also require that up to $100 of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if $70 were deposited in an account by check(s) on a Monday, the entire $70 must be available for withdrawal at the start of business on Tuesday. If $200 were deposited by check(s) on a Monday, this section requires that $100 of the funds be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the $100 must be applied is at the discretion of the depositary bank, as long as it is not applied to any checks subject to next-day availability. The $100 next-day availability rule does not apply to deposits at nonproprietary ATMs.

[2] Nothing in the Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

b. The $100 that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a $1,000 Treasury check, and a $1,000 local check in its account on Monday, $1,100 must be made available for withdrawal on Tuesday—the proceeds of the $1,000 Treasury check, as well as the first $100 of the local check.

c. A depositary bank may aggregate all local and nonlocal check deposits made by the customer on a given banking day for the purposes of the $100 next-day availability rule. Thus, if a customer has two accounts at the depositary bank, and on a particular banking day makes deposits to each account, $100 of the total deposited to the two accounts must be made available on the business day after deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

d. If the customer deposits a $500 local check, and gets $100 cash back at the time of deposit, the bank need not make an additional $100 available for withdrawal on the following day. Similarly, if the customer depositing the local check has a negative book balance, or negative available balance in its account at the time of deposit, the $100 that must be available on the next business day may be made available by applying the $100 to the negative balance, rather than making the $100 available for withdrawal by cash or check on the following day.

6. Special Deposit Slips.

a. Under the Act, a depositary bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the Act because many banks determine the availability of their customers' check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check, a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depositary bank, or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.

b. A bank cannot distinguish whether the check is a state or local government check, cashier's check, certified check, or teller's check by reading the MICR-encoded routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

c. The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a deposit at an ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section or second-day availability under paragraph (c)(2) of this section, and if the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

d. A bank may meet this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it also must provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

e. Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank provides the special deposit slips only upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips, or the bank must post a notice advising customers that the slips are available upon request. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate. A bank may require the customer to segregate the checks subject to next-day availability for which special deposit slips could be required, and to indicate on a regular deposit slip that such checks are being deposited, if the bank so instructs its customers in its initial disclosure.

*V. Section 229.11 [Reserved]*

*VI. Section 229.12 Availability Schedule*

A. 229.12(a) Effective Date

1. The availability schedule set forth in this section supersedes the temporary schedule that was effective September 1, 1988, through August 31, 1990.

B. 229.12(b) Local Checks and Certain Other Checks

1. Local checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited.

2. In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c), checks drawn on Federal Reserve Banks and Federal Home Loan Banks, checks drawn by a state or unit of general local government, cashier's checks, certified checks, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depositary bank, must be made available for withdrawal by the second business day following deposit.

3. Exceptions are made for withdrawals by cash or similar means and for deposits in banks located outside the 48 contiguous states. Thus, the proceeds of a local check deposited on a Monday generally must be made available for withdrawal on Wednesday.

C. 229.12(c) Nonlocal Checks

1. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, i.e., proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. In addition, a check described in § 229.10(c) that does not meet the conditions for next-day availability (or second-day availability) is treated as a nonlocal check, if the check is drawn on or payable through or at a nonlocal paying bank. Adjustments are made to the schedule for withdrawals by cash or similar means and deposits in banks located outside the 48 contiguous states.

2. Reduction in Schedules.

a. Section 603(d)(1) of the Act (12 U.S.C. 4002(d)(1)) requires the Board to reduce the statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that ''if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly.'' H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

b. Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the Act's schedules due to transportation arrangements or proximity between the check processing regions of the depositary bank and the paying bank, allowing for faster collection and return. Appendix B sets forth the specific reduction of schedules applicable to banks located in certain check processing regions.

c. A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit union payable-through share draft may be subject to a reduction in schedules if the routing number of the payable-through bank that appears on the draft is included in Appendix B, even though the determination that the payable-through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

D. 229.12(d) Time Period Adjustment for Withdrawal by Cash or Similar Means

1. The Act provides an adjustment to the availability rules for cash withdrawals. Funds from local and nonlocal checks need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule. At 5:00 p.m., $400 of the deposit must be made available for cash withdrawal. This $400 is in addition to the first $100 of a day's deposit, which must be made available for withdrawal at the start of business on the first business day following the banking day of deposit. If the proceeds of local and nonlocal checks become available for withdrawal on the same business day, the $400 withdrawal limitation applies to the aggregate amount of the funds that became available for withdrawal on that day. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule.

2. The Act recognizes that the $400 that must be provided on the day specified in the schedule may exceed a bank's daily ATM

cash withdrawal limit, and explicitly provides that the Act does not supersede the bank's policy in this regard. The Board believes that the rationale for accommodating a bank's ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank's cash withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart.

3. The Board believes that the Congress included this special cash withdrawal rule to provide a depositary bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a local check on a Monday, and that check is returned by the paying bank, the depositary bank may not receive the returned check until Thursday, the day after funds for a local check ordinarily must be made available for withdrawal. The intent of the special cash withdrawal rule is to minimize this risk to the depositary bank. For this rule to minimize the depositary bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by the bank on the customer's behalf during the day. Thus, the cash withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The rule also would apply to checks presented over the counter for payment on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had became available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cut-off hour established under U.C.C. 4–108. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

E. 229.12(e) Extension of Schedule for Certain Deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands

1. The Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for local checks, nonlocal checks (including nonlocal checks subject to the reduced schedules of Appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depositary bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the third business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

2. The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depositary bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the second rather than the third business day following deposit.

F. 229.12(f) Deposits at Nonproprietary ATMs

1. The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of § 229.10(c)(1)(vii) requiring a depositary bank to make up to $100 of an aggregate daily deposit available for withdrawal on the first business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

*VII. Section 229.13 Exceptions*

A. Introduction

1. While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the Act, the Congress gave the Board the discretion to determine whether certain other exceptions should be included in its regulations. Specifically, the Act gives the Board the authority to establish exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions apply to local and nonlocal checks as well as to checks that must otherwise be accorded next-day (or second-day) availability under § 229.10(c).

2. Many checks will not be returned to the depositary bank by the time funds must be made available for withdrawal under the next-day (or second-day), local, and nonlocal schedules. In order to reduce risk to depositary banks, the Board has exercised its statutory authority to adopt these exceptions to the schedules in the regulation to allow the depositary bank to extend the time within which it is required to make funds available.

3. The Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority if and when circumstances requiring its implementation arise.

B. 229.13(a) New Accounts

1. Definition of New Account.

a. The Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is opened when the first deposit is made to the account. An account is not considered a new account, however, if each customer on the account has a transaction account relationship with the depositary bank, including a dormant account, that is at least 30 calendar days old or if each customer has had an established transaction account with the depositary bank within the 30 calendar days prior to opening the second account.

b. The following are examples of what constitutes, and does not constitute, a new account:

i. If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.

ii. If a customer's account were closed and another account opened as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closes an established account and opens a separate account within 30 days, the new account is not subject to the new account exception.

iii. If a customer has a savings deposit or other deposit that is not an account (as that term is defined in § 229.2(a)) at the bank, and opens an account, the account is subject to the new account exception.

iv. If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new account exception.

v. If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new account exception.

vi. If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new account exception, even if the other individual on the account has an established account relationship with the bank.

2. Rules Applicable to New Accounts.

a. During the new account exception period, the schedules for local and nonlocal checks do not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with § 229.10.

b. Special rules also apply to deposits of Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, state and local government checks, cashier's

checks, certified checks, teller's checks, and, for the purposes of the new account exception only, traveler's checks. The first $5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance with § 229.10(c). Thus, the first $5,000 of the proceeds of these check deposits must be made available on the first business day following deposit, if the deposit is made in person to an employee of the depositary bank and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over the counter, in accordance with § 229.10(c)(2). (Proceeds of Treasury check deposits must be made available on the first business day after deposit, even if the check is not deposited in person to an employee of the depositary bank.) Funds in excess of the first $5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of § 229.10(c)(1)(vi) and (vii) that ''on us'' checks and the first $100 of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

3. Representation by Customer. The depositary bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

C. 229.13(b) Large Deposits

1. Under the large deposit exception, a depositary bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds $5,000. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). Although the first $5,000 of a day's deposit is subject to the availability otherwise provided for checks, the amount in excess of $5,000 may be held for an additional period of time as provided in § 229.13(h). When the large deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depositary bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

2. The following example illustrates the operation of the large deposit exception. If a customer deposits $2,000 in cash and a $9,000 local check on a Monday, $2,100 (the proceeds of the cash deposit and $100 from the local check deposit) must be made available for withdrawal on Tuesday. An additional $4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining $4,000 may be held for an additional period of time under the large deposit exception.

3. Where a customer has multiple accounts with a depositary bank, the bank may apply the large deposit exception to the aggregate deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depositary bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large deposit exception. Aggregation of deposits to multiple accounts is permitted because the Board believes that the risk to the depositary bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

D. 229.13(c) Redeposited Checks

1. The Act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depositary bank. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c).

2. This exception addresses the increased risk to the depositary bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see § 229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.

3. To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depositary bank that made $100 of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check, including the $100, if the check is returned unpaid, and the $100 need not be made available again if the check is redeposited.

E. 229.13(d) Repeated Overdrafts

1. The Act gives the Board the authority to establish an exception for ''deposit accounts which have been overdrawn repeatedly.'' This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer's account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

2. The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depositary bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of $5,000 or more, or would have become negative in an amount of $5,000 or more if checks or other charges to the account had been paid.

3. The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (e.g. ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned unpaid. An overdraft resulting from an error on the part of the depositary bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§ 229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

4. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii).

F. 229.13(e) Reasonable Cause To Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). If the reasonable cause exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.

2. The following are several examples of circumstances under which the reasonable cause exception may be invoked:

a. If a bank received a notice from the paying bank that a check was not paid and is being returned to the depositary bank, the depositary bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

b. The depositary bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer's account does not currently have sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depositary bank could invoke the exception and disclose as the reason the exception is being invoked the fact that information from the paying bank indicates that the check may not be paid.

c. The fact that a check is deposited more than six months after the date on the check (*i.e.* a stale check) is a reasonable indication that the check may be uncollectible, because under U.C.C. 4–404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check may not be properly payable under U.C.C. 4–401. The bank, in its notice, should specify that the check is stale-dated or postdated.

d. There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid also may justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check might not be paid.

3. The Board has included a reasonable cause exception notice as a model notice in Appendix C (C–13). The model notice includes several reasons for which this exception may be invoked. The Board does not intend to provide a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear on the model notice may be used as the basis for extending a hold, if the reason satisfies the conditions for invoking this exception. A depositary bank may invoke the reasonable cause exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

4. The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depositary bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the depositary bank knows it will not have the opportunity to learn of nonpayment of that check before funds must be made available under the availability schedules. Similarly, a depositary bank cannot invoke the reasonable cause exception based on the race or national origin of the depositor.

5. If a depositary bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depositary bank may not assess any overdraft fee (such as an ''NSF'' charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

G. 229.13(f) Emergency Conditions

1. Certain emergency conditions may arise that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the depositary bank may extend the holds that are placed on deposits of checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. For example, if a bank learns that a check has been delayed in the process of collection due to severe weather conditions or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay. This exception applies to local and nonlocal checks, as well as checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). In cases where the emergency conditions exception does not apply, as in the case of deposits of cash or electronic payments under § 229.10 (a) and (b), the depositary bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

H. 229.13(g) Notice of Exception

1. In general.

a. If a depositary bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10(c) and 229.12, it must provide a notice to its customer. Except in the cases described in paragraphs (g)(2) and (g)(3) of this section, notices must be given each time an exception hold is invoked and must state the customer's account number, the date of deposit, the reason the exception was invoked, and the time period within which funds will be available for withdrawal.

b. With respect to paragraph (g)(1), the requirement that the notice state the time period within which the funds shall be made available may be satisfied if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit. Appendix C (C–12) contains a model notice.

c. For deposits made in person to an employee of the depositary bank, the notice generally must be given to the person making the deposit, i.e., the ''depositor'', at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, or through the mail, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made.

d. Notice to the customer also may be provided at a later time, if the facts upon which the determination to invoke the exception do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must mail the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

e. If the depositary bank extends the hold placed on a deposit due to an emergency condition, the notice requirement generally applies; however, the regulation provides that the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depositary bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

f. In those cases described in paragraphs (g)(2) and (g)(3), the depositary bank need not

provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when ''on us,'' local, and nonlocal checks will be available for withdrawal if an exception is invoked.

2. One-time exception notice.

a. Under paragraph (g)(2), if a nonconsumer account (see Commentary to § 229.2(n)) is subject to the large deposit or redeposited check exception, the depositary bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period within which deposits subject to the exception will be available for withdrawal (see Model Notice C–14). A depositary bank may provide a one-time notice to a nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. A one-time notice may state that the depositary bank will apply exception holds to certain subsets of deposits to which the large deposit or redeposited check exception may apply, and the notice should identify such subsets. For example, the depositary bank may apply the redeposited check exception only to checks that were redeposited automatically by the depositary bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary bank may send individual hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–12).

b. In the case of a deposit of multiple checks, the depositary bank has the discretion to place an exception hold on any combination of checks in excess of $5,000. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks. For example, if a customer deposits a $5,000 local check and a $5,000 nonlocal check, under the large deposit exception, the depositary bank may make funds available in the amount of (1) $100 on the first business day after deposit, $4,900 on the second business day after deposit (local check), and $5,000 on the eleventh business day after deposit (nonlocal check with 6-day exception hold), or (2) $100 on the first business day after deposit, $4,900 on the fifth business day after deposit (nonlocal check), and $5,000 on the seventh business day after deposit (local check with 5-day exception hold). The notice should reflect the bank's priorities in placing exception holds on next-day (or second-day), local, and nonlocal checks.

3. Notice of repeated overdraft exception. Under paragraph (g)(3), if an account is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see Model Notice C–15). A depositary bank may provide a one-time notice to a customer under paragraph (g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account.

4. Record retention. A depositary bank must retain a record of each notice of a reasonable cause exception for a period of two years, or such longer time as provided in the record retention requirements of § 229.21. This record must contain a brief description of the facts on which the depositary bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, such as where the exception was invoked on the basis of a notice of nonpayment received, the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.

I. 229.13(h) Availability of Deposits Subject to Exceptions

1. If a depositary bank invokes any exception other than the new account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to one business day for ''on us'' checks, five business days for local checks, and six business days for nonlocal checks is reasonable. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depositary bank to establish that a longer period is reasonable.

2. For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank receives a notification from the paying bank that the check is being returned unpaid, the bank may determine that a longer hold is warranted, if it decides not to charge back the customer's account based on the notification. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

3. With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, and teller's checks subject to the next-day (or second-day) availability requirement, the depositary bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

4. One business day for ''on us'' checks, five business days for local checks, and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned. For example, if a customer deposits a $7,000 cashier's check drawn on a nonlocal bank, and the depositary bank applies the large deposit exception to that check, $5,000 must be available for withdrawal on the first business day after the day of deposit and the remaining $2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depositary bank establishes that a longer hold is reasonable.

5. In the case of the application of the emergency conditions exception, the depositary bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.10(c) or 229.12, whichever is later.

6. This provision does not apply to holds imposed under the new account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under § 229.10. This subpart does not specify the maximum time period within which the proceeds of local and nonlocal checks must be made available for withdrawal during the new account period.

*VIII. Section 229.14 Payment of Interest*

A. 229.14(a) In General

1. This section requires that a depositary bank begin accruing interest on interest-bearing accounts not later than the day on which the depositary bank receives credit for the funds deposited.[3] A depositary bank

[3] This section implements section 606 of the Act (12 U.S.C. 4005). The Act keys the requirement to pay interest to the time the depositary bank receives provisional credit for a check. Provisional credit is a term used in the U.C.C. that is derived from the Code's concept of provisional settlement. (See U.C.C. 4–214 and 4–215.) Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes final. Under Subpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. Accordingly, this section uses the term credit rather than provisional credit, and this section applies regardless of whether a credit would be provisional or final under the U.C.C. Credit does not include a bookkeeping entry (sometimes referred to as deferred credit) that does not represent funds actually available for the bank's use.

generally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depositary bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit generally is received on the day the bank that operates the ATM credits the depositary bank for the amount of the deposit.

2. Because account includes only transaction accounts, other interest-bearing accounts of the depositary bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term interest to refer to payments to or for the account of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).) Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

3. It may be difficult for a depositary bank to track which day the depositary bank receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent to determine when the depositary bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule.

4. This paragraph also permits a depositary bank to accrue interest on checks deposited to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (e.g., ''on us'' checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts, regardless of when the bank received credit on the funds deposited in any particular account. Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account.

5. This section is not intended to limit a policy of a depositary bank that provides that interest accrues only on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period, provided that the balance is determined based on the date that the depositary bank receives credit for the funds. This section also is not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

B. 229.14(b) Special Rule for Credit Unions

1. This provision implements a requirement in section 606(b) of the Act, and provides an exemption from the payment-of-interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment-of-interest requirements, as long as they provide notice of their interest accrual policies in accordance with § 229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

2. The Act limits this exemption to credit unions; other types of banks must comply with the payment-of-interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

C. 229.14(c) Exception for Checks Returned Unpaid

1. This provision is based on section 606(c) of the Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid, regardless of the reason for return.

*IX. Section 229.15 General Disclosure Requirements*

A. 229.15(a) Form of Disclosures

1. This paragraph sets forth the general requirements for the disclosures required under Subpart B. All of the disclosures must be given in a clear and conspicuous manner, must be in writing, and, in most cases, must be in a form the customer may keep. Disclosures posted at locations where employees accept consumer deposits, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep. Appendix C of the regulation contains model forms, clauses, and notices to assist banks in preparing disclosures.

2. Disclosures concerning availability must be grouped together and may not contain any information that is not related to the disclosures required by this subpart. Therefore, banks may not intersperse the required disclosures with other account disclosures, and may not include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information that is related to their availability policies. For example, a bank may inform its customers that, even when the bank has already made funds available for withdrawal, the customer is responsible for any problem with the deposit, such as the return of a deposited check.

3. The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures, such as ''When Deposits are Available for Withdrawal.''

B. 229.15(b) Uniform Reference to Day of Availability

1. This paragraph requires banks to disclose in a uniform manner when deposited funds will be available for withdrawal. Banks must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds. The business day funds will be available must be disclosed as ''the _____ business day after'' the day of deposit, or substantially similar language. The business day of availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under § 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that imposes delays of four intervening business days for nonlocal checks must describe those checks as being available on ''the fifth business day after'' the day of the deposit.

C. 229.15(c) Multiple Accounts and Multiple Account Holders

1. This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

D. 229.15(d) Dormant or Inactive Accounts

1. This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

*X. Section 229.16 Specific Availability Policy Disclosure*

A. 229.16(a) General

1. This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.18(d), which require that banks furnish notices of their specific policy regarding availability of deposited

funds. The disclosure provided by a bank must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

2. The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods.

3. A bank may disclose that funds are available for withdrawal on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank may disclose that its policy is to make funds available from deposits of local checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day; the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (See the definition of available for withdrawal in § 229.2(d).)

B. 229.16(b) Content of Specific Policy Disclosure

1. This paragraph sets forth the items that must be included, as applicable, in a bank's specific availability policy disclosure. The information that must be disclosed by a particular bank will vary considerably depending upon the bank's availability policy. For example, a bank that makes deposited funds available for withdrawal on the business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the first business day after the day of deposit, the bank's business days, and when deposits are considered received.

2. On the other hand, a bank that has a policy of routinely delaying on a blanket basis the time when deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under the federal law or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the day that funds from each type of deposit will be available for withdrawal.

3. Some banks may have a combination of next-day availability and blanket delays. For example, a bank may provide next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and nonlocal personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in availability and tell the customer when each category would be available for withdrawal, and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

4. Because many banks' availability policies may be complex, a bank must give a brief summary of its policy at the beginning of the disclosure. In addition, the bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in § 229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time periods allowed by the regulation on a case-by-case basis. Also, a bank that must make certain checks available faster under Appendix B (reduction of schedules for certain nonlocal checks) must state that some check deposits will be available for withdrawal sooner because of special rules and that a list of the pertinent routing numbers is available upon request.

5. Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit union payable-through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§ 229.12 and 229.13.

6. The business day cut-off time used by the bank must be disclosed and if some locations have different cut-off times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cut-off times that might apply.

7. A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12(f) must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank's proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank's name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash withdrawal limitations of § 229.12(d), or the provision in § 229.19(e) allowing holds to be placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

8. A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to § 229.10) and state the other categories of deposits and the time periods that will be applicable to those deposits. For example, a bank might disclose the four-digit Federal Reserve routing symbol for local checks and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank's detailed schedule that would enable the customer to determine the availability of any check and must provide such schedule upon request. A change in the bank's detailed schedule would not trigger the change in policy disclosure requirement of § 229.18(e).

C. 229.16(c) Longer Delays on a Case-by-Case Basis

1. Notice in specific policy disclosure.

a. Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing their customers with immediate or next-day availability for deposited funds—and delay the time when funds are available for withdrawal only from time to time determined on a case-by-case basis, must provide notice of this in their specific availability policy disclosure. This paragraph outlines the requirements for that notice.

b. In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must: state that from time to time funds may be available for withdrawal later than the time periods in their specific policy disclosure, disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed, state that customers will be notified when availability of a deposit is delayed on a case-by-case basis, and advise customers to ask if they need to be sure of the availability of a particular deposit.

c. A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by § 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under § 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements. A bank that imposes delays on a case-by-case basis may avail itself of the one-time notice provisions in § 229.13(g)(2) and (3) for deposits to which those provisions apply.

2. Notice at time of case-by-case delay.

a. In addition to including the disclosures required by paragraph (c)(1) of this section in their specific availability policy disclosure, banks that delay or extend the time period when funds are available for withdrawal on a case-by-case basis must give customers a notice when availability of funds from a particular deposit will be delayed or extended beyond the time when deposited funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include the account number, the date and amount of the deposit, and the amount of the deposit being delayed.

b. If notice of the delay was not given at the time the deposit was made and the bank assesses overdraft or returned check fees on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that result from the deposited funds not being available if the check that was deposited was in fact paid by the payor bank, and explain how to request a refund of any fees. (See § 229.16(c)(3).)

c. The requirement that the case-by-case hold notice state the day that funds will be made available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal. Instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

d. For deposits made in person to an employee of the depositary bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the deposit, that is, the ''depositor.'' The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may be provided not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit.

3. Overdraft and returned check fees. If a depositary bank delays or extends the time when funds from a deposited check are available for withdrawal on a case-by-case basis and does not provide a written notice to its depositor at the time of deposit, the depositary bank may not assess any overdraft or returned check fees (such as an insufficient funds charge) or charge interest for use of an overdraft line of credit, if the deposited check is paid by the paying bank and these fees would not have occurred had the additional case-by-case delay not been imposed. A bank may assess an overdraft or returned check fee under these circumstances, however, if it provides notice to the customer in the notice required by paragraph (c)(2) of this section that the fee may be subject to refund, and refunds the fee upon the request of the customer when required to do so. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that are assessed if the deposited check is paid, and indicate where such requests for a refund of overdraft fees should be directed. Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception hold notice in accordance with § 229.13.

D. 229.16(d) Credit Union Notice of Interest Payment Policy

1. This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest payment requirement is set forth in § 229.14(a).) Such credit unions are required to describe their policy with respect to accrual of interest or dividends on deposits in their specific availability policy disclosure.

*XI. Section 229.17 Initial Disclosures*

A. This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting a deposit to open an account. Disclosures must be given at the time the bank accepts an initial deposit regardless of whether the bank has opened the account yet for the customer. If a bank, however, receives a written request by mail from a person asking that an account be opened and the request includes an initial deposit, the bank may open the account with the deposit, provided the bank mails the required disclosures to the customer not later than the business day following the banking day on which the bank receives the deposit. Similarly, if a bank receives a telephone request from a customer asking that an account be opened with a transfer from a separate account of the customer's at the bank, the disclosure may be mailed not later than the business day following the banking day of the request.

*XII. Section 229.18 Additional Disclosure Requirements*

A. 229.18(a) Deposit Slips

1. This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under § 229.10(c). A bank is not responsible for ensuring that the notice appear on deposit slips that the customer does not obtain from or through the bank. This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988.

B. 229.18(b) Locations Where Employees Accept Consumer Deposits

1. This paragraph describes the statutory requirement that a bank post in each location where its employees accept consumer deposits a notice of its availability policy pertaining to consumer accounts. The notice that is required must specifically state the availability periods for the various deposits that may be made to consumer accounts. The notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted.

C. 229.18(c) Automated Teller Machines

1. This paragraph sets forth the required notices for ATMs. Paragraph (c)(1) provides that the depositary bank is responsible for posting a notice on all ATMs at which deposits can be made to accounts at the depositary bank. The depositary bank may arrange for a third party, such as the owner or operator of the ATM, to post the notice and indemnify the depositary bank from liability if the depositary bank is liable under § 229.21 for the owner or operator failing to provide the required notice.

2. The notice may be posted on a sign, shown on the screen, or included on deposit envelopes provided at the ATM. This disclosure must be given before the customer has made the deposit. Therefore, a notice provided on the customer's deposit receipt or appearing on the ATM's screen after the customer has made the deposit would not satisfy this requirement.

3. Paragraph (c)(2) requires a depositary bank that operates an off-premise ATM from which deposits are removed not more than two times a week to make a disclosure of this fact on the off-premise ATM. The notice must disclose to the customer the days on which deposits made at the ATM will be considered received.

D. 229.18(d) Upon Request

1. This paragraph requires banks to provide written notice of their specific availability policy to any person upon that person's oral or written request. The notice must be sent within a reasonable period of time following receipt of the request.

E. 229.18(e) Changes in Policy

1. This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

2. Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. A bank is not required to give a notice when there is a change in Appendix B (reduction of schedules for certain nonlocal checks).

3. A bank that has provided its customers with a list of ATMs under § 229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

*XIII. Section 229.19 Miscellaneous*

A. 229.19(a) When Funds Are Considered Deposited

1. The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances.

2. Staffed facilities and ATMs. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours generally are considered deposited when placed in the lobby box; a bank may, however, treat deposits to lobby boxes the same as deposits to night depositories (as provided in § 229.19(a)(3)), provided a notice appears on the lobby box informing the customer when such funds will be considered deposited.

3. Mail. Funds mailed to the depositary bank are considered deposited on the banking day they are received by the depositary bank. The funds are received by the depositary bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check processing area.

4. Other facilities.

a. In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depositary bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

b. A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depositary bank generally assumes the responsibility for collecting the mail from the lock box, processing the checks, and crediting the corporation for the amount of the deposit. Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depositary bank for processing.

5. Certain off-premise ATMs. A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This provision is intended to address the practices of some banks of servicing certain remote ATMs infrequently. If a depositary bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered deposited until a future day, in accordance with § 229.18.

6. Banking day of deposit.

a. This paragraph also provides that a deposit received on a day that the depositary bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cut-off hour of 2 p.m. or later for receipt of deposits at its head office or branch offices. For receipt of deposits at ATMs or off-premise facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12 noon or later (either local time of the branch or other location of the depositary bank at which the account is maintained or local time of the ATM or off-premise facility). The depositary bank must use the same timing method for establishing the cut-off hour for all ATMs and off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM or off-premise deposits is intended to provide greater flexibility in the servicing of ATMs and other off-premise facilities.

b. Different cut-off hours may be established for different types of deposits. For example, a bank may establish a 2 p.m. cut-off for the receipt of check deposits, but a later cut-off for the receipt of wire transfers. Different cut-off hours also may be established for deposits received at different locations. For example, a different cut-off may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12 noon cut-off for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits for purposes of this subpart can be established earlier than 2 p.m.

c. A bank is not required to remain open until 2 p.m. If a bank closes before 2 p.m., deposits received after the closing may be considered deposited on the next banking day. Further, as § 229.2(f) defines the term banking day as the portion of a business day on which a bank is open to the public for substantially all of its banking functions, a day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping drive-in or walk-up teller windows open, when the rest of the bank is closed to the public. For example, a banking office that usually provides a full range of banking services may close at 12 noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under those circumstances, the bank is considered closed and may consider deposits received after 12 noon as having been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2 p.m., or that it continues its back office operations throughout the day, would not affect this result. A bank may not, however, close individual teller stations and reopen them for next-day's business before 2 p.m. during a banking day.

B. 229.19(b) Availability at Start of Business Day

1. If funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of 9 a.m. or the time the depositary bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in § 229.12(d). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10 a.m., funds must be available for customer withdrawal beginning at 10 a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 9 a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

2. The start of business is determined by the local time of the branch or other location of the depositary bank at which the account is maintained. For example, if funds in a customer's account at a west coast bank are first made available for withdrawal at the start of business on a given day, and the customer attempts to withdraw the funds at an east coast ATM, the depositary bank is not required to make the funds available until 9 a.m. west coast time (12 noon east coast time).

C. 229.19(c) Effect on Policies of Depositary Bank

1. This subpart establishes the maximum hold that may be placed on customer deposits. A depositary bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depositary bank also may adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

2. This regulation does not affect a depositary bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depositary bank may charge back the customer's account for the full amount of the check. (See § 229.33(d) and Commentary.)

3. Nothing in the regulation requires a depositary bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the special cash withdrawal rule set forth in § 229.12(d) states that a bank must make up to $400 available for cash withdrawals no later than 5 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depositary bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

4. The special cash withdrawal rule in the Act recognizes that the $400 that must be made available for cash withdrawal by 5 p.m. on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit and explicitly provides that the Act does not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting cash withdrawals from automated teller machines to $250 per day, the regulation would not require that the bank dispense $400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

5. Even though the Act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the Act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the Act's provision that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a depositary bank from establishing ATM cash withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer's account (provided that the permissible hold has expired).

6. Some small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

7. Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station if the bank has a policy limiting the amount of cash that may be withdrawn, and if that policy is applied equally to all customers of the bank, is based on security, operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account (as long as the permissible hold has expired). The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

D. 229.19(d) Use of Calculated Availability

1. A depositary bank may provide availability to its nonconsumer accounts on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

E. 229.19(e) Holds on Other Funds

1. Section 607(d) of the Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the Act is designed to prevent evasion of the Act's availability requirements.

2. This paragraph clarifies that if a customer deposits a check in an account (as defined in § 229.2(a)), the bank may not place a hold on any of the customer's funds so that the funds that are held exceed the amount of the check deposited or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer's non transaction account, rather than a transaction account, for deposits made to the customer's transaction account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit and the length of the hold does not exceed the time periods permitted by this regulation.

3. These restrictions also apply to holds placed on funds in a customer's account (as defined in § 229.2(a)) if a customer cashes a check at a bank (other than a check drawn on that bank) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account. A bank may not, however, place a hold on any account when an ''on us'' check is cashed over the counter. ''On us'' checks are considered finally paid when cashed (see U.C.C. 4–215(a)(1)).

F. 229.19(f) Employee Training and Compliance

1. The Act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the Act of the requirements of the Act, and to establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

2. This paragraph requires a bank to establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out.

G. 229.19(g) Effect of Merger Transaction

1. After banks merge, there is often a period of adjustment before their operations are consolidated. This paragraph accommodates this adjustment period by allowing merged banks to be treated as separate banks for purposes of this subpart for a period of up to one year after consummation of the merger transaction, except that a customer of any bank that is a party to the transaction that has an established account with that bank may not be treated as a new account holder for any other party to the transaction for purposes of the new account exception of § 229.13(a), and a deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with § 229.19(a).

2. This rule affects the status of the combined entity in several areas. For example, this rule would affect when an ATM is a proprietary ATM (§ 229.2(aa) and § 229.12(b)) and when a check is considered drawn on a branch of the depositary bank (§ 229.10(c)(1)(vi)).

3. Merger transaction is defined in § 229.2(t).

*XIV. Section 229.20 Relation to State Law*

A. 229.20(a) In General

1. Several states have enacted laws that govern when banks in those states must make funds available to their customers. The Act provides that any state law in effect on September 1, 1989, that provides that funds

be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the Act and the regulation. The Conference Report on the Act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal. H.R. Rep. No. 261, 100th Cong. 1st Sess. at 182 (1987).

2. Thus, if a state had wished to adopt a law governing funds availability, it had to have made that law effective on or before September 1, 1989. Laws adopted after that date do not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that had a law governing funds availability in effect before September 1, 1989, amended its law after that date, the amendment would not supersede federal law, but an amendment deleting a state requirement would be effective.

3. If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

4. The Act also provides that any state law that provides for availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

B. 229.20(b) Preemption of Inconsistent Law

1. This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective.

C. 229.20(c) Standards for Preemption

1. This section describes the standards the Board uses in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depositary bank to make funds available to a customer in a longer period of time than the maximum period permitted by the Act and this regulation. For example, a state law that permits a hold of four business days or longer for local checks permits a hold that is longer than that permitted under the Act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first $100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of $100 or less that is deposited. Under the Act and this regulation, if either one $150 check or three $50 checks are deposited on a given day, $100 must be made available for withdrawal on the next business day, and $50 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the Act, this provision of state law is inconsistent and preempted in its entirety.

3. In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with § 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

4. State laws that provide maximum availability periods for categories of deposits that are not covered by the Act would not be preempted. Thus, state funds availability laws that apply to funds in time and savings deposits are not affected by the Act or this regulation. In addition, the availability schedules of several states apply to ''items'' deposited to an account. The term items may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not covered by the Act also would not be preempted. For example, a state law that governs money market mutual funds would not be affected by the Act or this regulation.

5. Generally, state rules governing the disclosure or notice of availability policies applicable to accounts also are preempted, if they are different from the federal rules. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than ''accounts,'' such as savings or time deposits, are not inconsistent with the Act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

D. 229.20(d) Preemption Determinations

1. The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of Subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state U.C.C. provisions to the requirements of Subpart C.

E. 229.20(e) Procedures for Preemption Determinations

1. This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board.

*XV. Section 229.21 Civil Liability*

A. 229.21(a) Civil Liability

1. This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to § 229.20.)

B. 229.21(b) Class Action Awards

1. This paragraph sets forth the provision in the Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

C. 229.21(c) Bona Fide Errors

1. A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account; or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately.

D. 229.21(d) Jurisdiction

1. The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

E. 229.21(e) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form, notice, or clause (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were

subsequently determined to be invalid. Banks may rely on this Commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

F. 229.21(f) Exclusions

1. This provision clarifies that liability under this section does not apply to violations of the requirements of Subpart C of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

G. 229.21(g) Record Retention

1. Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it actually has given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers' receipt of the required disclosures and notices. A bank must, however, retain a copy of each notice provided pursuant to its use of the reasonable cause exception under § 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

*XVI. Section 229.30 Paying Bank's Responsibility for Return of Checks*

A. 229.30(a) Return of Checks

1. This section requires a paying bank (which, for purposes of Subpart C, may include a payable-through and payable-at bank; see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the ''two-day/four-day'' test, and the ''forward collection'' test.

2. Under the ''two-day/four-day'' test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check processing region or four business days after presentment where the paying and depositary banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depositary bank to be collected. Therefore, the Board has included a ''forward collection'' test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary banks within the two-day or four-day period.

3. Two-day/four-day test.

a. Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether or not the paying and depositary banks are located in the same check processing region.

b. Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depositary bank by 4:00 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depositary bank located in the same check processing region by 4 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depositary bank, the deadline to complete return is 4 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depositary bank by 4:00 p.m. on Friday.

c. This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

d. Often, returned checks will be delivered to the depositary bank together with forward collection checks. Where the last day on which a check could be delivered to a depositary bank under this two-day/four-day test is not a banking day for the depositary bank, a returning bank might not schedule delivery of forward collection checks to the depositary bank on that day. Further, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depositary bank.

e. The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of nonlocal checks, other than those covered by § 229.10(c), must be made available for withdrawal.

f. Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see § 229.31) as their agents to return checks to depositary banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would ''normally'' be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

4. Forward collection test.

a. Under the second, ''forward collection,'' test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depositary bank.

b. Generally, the paying bank would satisfy the ''forward collection'' test if it uses a transportation method and collection path for return comparable to that used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under § 229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

c. The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

d. Under the ''forward collection'' test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depositary bank, and (3) received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentment of the returned check.

e. This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (See § 229.2(ee).) A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.

f. Under the forward collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e. direct return, if similarly situated banks do not present checks directly to that depositary bank.

5. Examples.

a. If a check is presented to a paying bank on Monday and the depositary bank and the paying bank are participants in the same clearinghouse, the paying bank should arrange to have the returned check received by the depositary bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depositary bank if the paying bank received the deposit by noon on Tuesday.

b. i. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depositary bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

ii. The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks drawn on the depositary bank that would normally be used by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depositary banks.

iii. In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank delivers forward collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.

iv. If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward collection test.

c. If a paying bank normally sends its forward collection checks directly to the depositary bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depositary bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depositary bank, but could send them to a correspondent or a Federal Reserve Bank.

d. The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depositary bank directly to the depositary bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depositary bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.

6. Choice of returning bank. In meeting the requirements of the forward collection test, the paying bank is responsible for its own actions, but not for those of the depositary bank or returning banks. (This is analogous to the responsibility of collecting banks under U.C.C. 4–202(c).) For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank (including delay to create a qualified returned check), generally the paying bank has met its requirements. (See § 229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depositary bank as quickly as the forward collection of a check drawn on the depositary bank or, where the returning bank takes a day to create a qualified returned check under § 229.31(a), one day later than the forward collection time. If a paying bank returns a check on its banking day of receipt without settling for the check, as permitted under U.C.C. 4–302(a), and receives settlement for the returned check from a returning bank, it must promptly pay the amount of the check to the collecting bank from which it received the check.

7. Qualified returned checks. Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one business day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning.

8. Routing of returned checks.

a. In effect, under either test, the paying bank acts as an agent or subagent of the depositary bank in selecting a means of return. Under § 229.30(a), a paying bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depositary bank by courier or other means of delivery, bypassing returning banks; or

ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depositary bank under § 229.31(a), regardless of whether or not the returning bank handled the check for forward collection.

b. If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depositary bank at any location permitted under § 229.32(a).

9. Midnight deadline.

a. Except for the extension permitted by § 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. 4–301 and 4–302, which continue to apply. Under U.C.C. 4–302, a paying bank is ''accountable'' for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. 3–418(c) and 4–215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

b. The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable-through or a payable-at bank that is defined as a paying bank (see § 229.2(z)) and that returns a check. This requirement begins when the payable-through or payable-at bank receives the check during forward collection, not when the payor returns the check to the payable-through or payable-at bank. Nevertheless, a check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. 4–301. (See discussion of § 229.36(a).)

c. The liability section of this subpart (§ 229.38) provides that a paying bank is not subject to both ''accountability'' for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under U.C.C. 4–208, notwithstanding that the paying bank has returned the check. (See Commentary to § 229.33(a).)

10. U.C.C. provisions affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4–301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depositary bank or to a returning bank.

b. Section 4–301(a), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under § 229.31(c), not by revocation of settlement.

B. 229.30(b) Unidentifiable Depositary Bank

1. In some cases, a paying bank will be unable to identify the depositary bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return clerks will readily identify the depositary bank from the depositary bank indorsement required under § 229.35 and Appendix D. In cases where the paying bank is unable to identify the depositary bank, the paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depositary bank under § 229.31(a). The returning bank may be better able to identify the depositary bank.

2. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depositary bank under § 229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. This information will warn the bank that this check will require special research and handling in accordance with § 229.31(b). The returned check may not be prepared for automated return. The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check it is has not been paid.

3. The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirements for expeditious return by the paying bank. Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank. Although the lack of a requirement of expeditious return will create risks for the depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank's, or a collecting bank's, failure to use the indorsement required by § 229.35(a) and Appendix D. If the depositary bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank's customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depositary bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depositary bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

4. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depositary bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depositary bank's indorsement, making the indorsement unreadable. (See § 229.38(d).)

5. A paying bank's return under this paragraph is also subject to its midnight deadline under U.C.C. 4–301, Regulation J (if the check is returned through a Federal Reserve Bank), and the exception provided in § 229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depositary bank is insolvent or in other cases as provided in § 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. 4–208.

C. 229.30(c) Extension of Deadline

1. This paragraph permits extension of the deadlines for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by § 210.9 of Regulation J (12 CFR part 210) or § 229.36(f)(2) of this part), but not of the duty of expeditious return, in two circumstances:

a. A paying bank may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward collection checks. This paragraph removes the constraint of the deadline for returned checks if the returned check reaches either the depositary bank or the returning bank to which it is sent on that bank's banking day following the expiration of the applicable deadline. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast depositary bank even if the check arrives after the close of the depositary bank's banking day.

b. A paying bank may observe a banking day, as defined in the applicable U.C.C., on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the U.C.C. deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depositary bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depositary bank by the cut-off hour on its next banking day following the Saturday midnight deadline.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in U.C.C. 4–301 and 4–302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36(f)(2) of this part. As these extensions are designed to speed (§ 229.30(c)(1)), or at least not slow (§ 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

3. The paying bank satisfies its midnight or other return deadline by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects U.C.C. 4–301 and 4–302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

D. 229.30(d) Identification of Returned Check

1. Most paying banks currently use some form of stamp on a returned check indicating the reason for return. This paragraph makes this practice mandatory. No particular form of stamp is required, but the stamp must indicate the reason for return. A check is identified as a returned check by a reason for return stamp, even though the stamp does not specifically state that the check is a returned check. A reason such as ''Refer to Maker'' is permissible in appropriate cases. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check, but need not repeat the reason for return stated in the check if it in fact appears on the check.

E. 229.30(e) Depositary Bank Without Accounts

1. Subpart B of this regulation applies only to ''checks'' deposited in transaction-type ''accounts.'' Thus, a depositary bank with only time or savings accounts need not comply with the availability requirements of Subpart B. Collecting banks will not have couriers delivering checks to these banks as paying banks, because no checks are drawn on them. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to such a depositary bank may not be justified. Thus, the expedited return requirement of § 229.30(a) and the notice of nonpayment requirement of § 229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in U.C.C. 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12) would continue to apply to these checks. Returning banks also would be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depositary bank under the same rules as checks deposited in other banks, with the exception of the expeditious return and notice of nonpayment requirements of §§ 229.30(a), 229.31(a), and 229.33.

2. The expeditious return requirements also apply to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain

industrial banks are not depository institutions within the meaning of the Act, and therefore are not subject to the expedited availability and disclosure requirements of Subpart B. These banks do, however, maintain accounts as defined in § 229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depositary bank, in accordance with the requirements of this section.

F. 229.30(f) Notice in Lieu of Return

1. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or written notice must clearly indicate it is a notice in lieu of return and must be handled in the same manner as other returned checks. Notice by telephone, telegraph, or other electronic transmission, other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depositary banks are informed that the notice carries value. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). A bank using a notice in lieu of return gives a warranty under § 229.34(a)(4) that the original check has not been and will not be returned.

2. The requirement of this paragraph supersedes the requirement of U.C.C. 4–301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

3. The notice in lieu of return is subject to the provisions of § 229.30 and is treated like a returned check for settlement purposes. If the original check is over $2,500, the notice of nonpayment under § 229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of § 229.33.

4. If not all of the information required by § 229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

G. 229.30(g) Reliance on Routing Number

1. Although § 229.35 and Appendix D require that the depositary bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank's indorsement) when it is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depositary bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

*XVII. Section 229.31 Returning Bank's Responsibility for Return of Checks*

A. 229.31(a) Return of Checks

1. The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depositary bank for the purposes of returning the check.

2. A returning bank agrees to handle a returned check for expeditious return to the depositary bank if it:

a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

b. Handles a returned check for return that it did not handle for forward collection; or

c. Otherwise agrees to handle a returned check for expeditious return.

3. Two-day/four-day test. As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the ''two-day/four-day'' test, the check must be returned so that it would normally be received by the depositary bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check processing region as the depositary bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to § 229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

4. Forward collection test.

a. The ''forward collection'' test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depositary bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

b. Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks (''raw returns''), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

5. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depositary banks.

6. Examples.

a. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depositary bank and the returning bank are participants in the same clearinghouse, the returning bank should arrange to have the returned check received by the depositary bank by Tuesday. This would be the same day that it would deliver a forward collection check drawn on the depositary bank and received by the returning bank at a corresponding forward collection cut-off hour on Monday.

b. i. If a returning bank receives a returned check, and the returning bank normally would collect a forward collection check drawn on the depositary bank by sending the forward collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depositary bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

ii. A returning bank must return a check to the depositary bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward collection checks to the depositary bank.

iii. For some depositary banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable-through drafts normally does not have checks presented to it because the drafts are normally sent to the payable-through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the depositary bank and the location of the depositary bank, and determining whether similarly situated banks normally would deliver forward collection checks to the depositary bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.

7. Qualified returned checks.

a. The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to exercise ordinary care under U.C.C. 4–202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under U.C.C. 4–202 and § 210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward collection test, a returning bank may take an extra day to qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check. The qualified returned check must include the routing number of the depositary bank, the amount of the check, and a return identifier encoded on the check in magnetic ink.

b. If the returning bank is sending the returned check directly to the depositary bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence. The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.

8. Routing of returned check.

a. Under § 229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depositary bank by courier or other expeditious means of delivery; or

ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depositary bank under this section regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. The returned check may be sent to the depositary bank at any location permitted under § 229.32(a).

9. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depositary bank. (See U.C.C. 4–202(c) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depositary bank. (See § 229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.

10. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4–202(b), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.

b. Section 4–214(a), in that settlement for returned checks is made under § 229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.

B. 229.31(b) Unidentifiable Depositary Bank

1. This section is similar to § 229.30(b), but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depositary bank with respect to a check. Returning banks agreeing to handle checks for return to depositary banks under § 229.31(a) are expected to be expert in identifying depositary bank indorsements. In the limited cases where the returning bank cannot identify the depositary bank, the returning bank may send the returned check to a returning bank that agrees to handle the returned check for expeditious return under § 229.31(a), or it may send the returned check to a bank that handled the check for forward collection, even if that bank does not agree to handle the returned check expeditiously under § 229.31(a).

2. If the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward collection process, which will be better able to identify the depositary bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depositary bank. As in the case of paying banks under § 229.30(b), a returning bank's sending of a check to a bank that handled the check for forward collection under § 229.31(b) is not subject to the expeditious return requirements of § 229.31(a).

3. The returning bank's return of a check under this paragraph is subject to the midnight deadline under U.C.C. 4–202(b). (See definition of returning bank in § 229.2(cc).)

4. Where a returning bank receives a check that it does not agree to handle expeditiously under § 229.31(a), such as a check sent to it under § 229.30(b), but the returning bank is able to identify the depositary bank, the returning bank must thereafter return the check expeditiously to the depositary bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depositary bank or by other reasonably prompt means.

5. As in the case of a paying bank returning a check under § 229.30(b), a returning bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. The returned check may not be prepared for automated return.

C. 229.31(c) Settlement

1. Under the U.C.C., a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depositary bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See § 229.36(d) and Commentary to § 229.35(b).)

3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See § 229.39.) If payment cannot be obtained from a depositary or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on this basis of the liability of prior banks under § 229.35(b).

4. This paragraph affects U.C.C. 4–214(a) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under § 229.36(d), a bank collecting a check remains liable to prior collecting banks and

the depositary bank's customer under the U.C.C.

D. 229.31(d) Charges

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

E. 229.31(e) Depositary Bank Without Accounts

1. This paragraph is similar to § 229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depositary bank that does not maintain any accounts. (See the Commentary to § 229.30(e).)

F. 229.31(f) Notice in Lieu of Return

1. This paragraph is similar to § 229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. (See the Commentary to § 229.30(f).)

G. 229.31(g) Reliance on Routing Number

1. This paragraph is similar to § 229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depositary bank's indorsement or on qualified returned checks. (See the Commentary to § 229.30(g).)

*XVIII. Section 229.32 Depositary Bank's Responsibility for Returned Checks*

A. 229.32(a) Acceptance of Returned Checks

1. This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depositary banks with no preexisting arrangements as to where the returned checks should be delivered. This paragraph states where the depositary bank is required to accept returned checks and written notices of nonpayment under § 229.33. (These locations differ from locations at which a depositary bank must accept electronic notices.) It is derived from U.C.C. 3–111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of ''payment'' of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depositary bank must accept returned checks:

a. The depositary bank must accept returned checks at any location at which it requests presentment of forward collection checks such as a processing center. A depositary bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depositary bank indorsement states the name and address of the depositary bank, it must accept returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is ''New York, New York,'' each branch in New York City must accept returned checks.

ii. If no address appears in the depositary bank's indorsement, the depositary bank must accept returned checks at any branch or head office associated with the depositary bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers*, published by Thomson Financial Publishing Inc., which lists a city and state address for each routing number.

iii. The depositary bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check processing region. Under §§ 229.30(g) and 229.31(g), a paying or returning bank may rely on the depositary bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depositary bank's indorsement that is not in the same check processing region as the address associated with the routing number in the indorsement.

iv. If no routing number or address appears in its indorsement, the depositary bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of § 229.35 and Appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depositary bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depositary bank may require that returning or paying banks returning checks to it separate returned checks from forward collection checks being presented.

4. Under § 229.33(d), a depositary bank receiving a returned check or notice of nonpayment must send notice to its customer by its midnight deadline or within a longer reasonable time.

B. 229.32(b) Payment

1. As discussed in the commentary to § 229.31(c), under this regulation a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depositary bank. This paragraph imposes an obligation to ''pay'' a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may be used only with the agreement of the returning bank.

2. The depositary bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to U.C.C. 4–108, which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depositary bank is unable to make payment to a returning or paying bank on the banking day that it receives the returned check, because the returning or paying bank is closed for a holiday or because the time when the depositary bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depositary bank on the day the check is received by the depositary bank. For example, a depositary bank meets this requirement if it sends a wire transfer of funds to the returning or paying bank on the day it receives the returned check, even if the returning or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depositary bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depositary bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depositary bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.19(c)(2)(ii), 229.33(d) and 229.35(b).)

C. 229.32(c) Misrouted Returned Checks

1. This paragraph permits a bank receiving a check on the basis that it is the depositary bank to send the misrouted returned check to the correct depositary bank, if it can identify the correct depositary bank, either directly or through a returning bank agreeing to handle the check expeditiously under § 229.30(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from

which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depositary bank would be required to pay for the returned check under § 229.32(b), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.31(c). If the check was originally received ''free,'' that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a); however, it must act within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

D. 229.32(d) Charges

1. This paragraph prohibits a depositary bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depositary bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depositary bank, however, no fee may be charged.

*XIX. Section 229.33 Notice of Nonpayment*

A. 229.33(a) Requirement

1. Notice of nonpayment as required by this section and written notice in lieu of return as provided in §§ 229.30(f) and 229.31(f) serve different functions. The two kinds of notice, however, must meet the content requirements of this section. The paying bank must send a notice of nonpayment if it decides not to pay a check of $2,500 or more. A paying bank may rely on an amount encoded on the check in magnetic ink to determine whether the check is in the amount of $2,500 or more. The notice of nonpayment carries no value, and the check itself (or the notice in lieu of return) must be returned. The paying bank must ensure that the notice of nonpayment is received by the depositary bank by 4:00 p.m. local time on the second business day following presentment. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to create a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See Commentary to the definition of paying bank in § 229.2(z).)

2. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under § 229.34(b), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depositary bank that the check has been paid.

3. Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. For example, in many cases the return of a check through a clearinghouse to another participant of the clearinghouse will be made in time to meet the time requirements of this section. If the check normally will not be received by the depositary bank within the time limits for notice, the return of the check will not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depositary bank, unless the paying bank has reason to know the availability schedules are inaccurate.

4. Unless the returned check is used to satisfy the notice requirement, the requirement for notice is independent of and does not affect the requirements for timely and expeditious return of the check under § 229.30 and the U.C.C. (See § 229.30(a).) If a paying bank fails both to comply with this section and to comply with the requirements for timely and expeditious return under § 229.30 and the U.C.C. and Regulation J (12 CFR part 210), the paying bank shall be liable under either this section or such other requirements, but not both. (See § 229.38(b).) A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under U.C.C. 4–208, notwithstanding that the paying bank may have returned the check. (See U.C.C. 4–208 and 4–302.)

B. 229.33(b) Content of Notices

1. This paragraph provides that the notice must at a minimum contain eight elements which are specifically enumerated. In the case of written notices, the name and routing number of the depositary bank also are required.

2. If the paying bank cannot identify the depositary bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depositary bank. The collecting bank may be able to identify the depositary bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depositary bank.

C. 229.33(c) Acceptance of Notice

1. In the case of a written notice, the depositary bank is required to accept notices at the locations specified in § 229.32(a). In the case of telephone notices, the bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.

D. 229.33(d) Notification to Customer

1. This paragraph requires a depositary bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment, regardless of the amount of the check or notice. This requirement is similar to the requirement under the U.C.C. as interpreted in *Appliance Buyers Credit Corp.* v. *Prospect National Bank,* 708 F.2d 290 (7th Cir. 1983), that a depositary bank may be liable for damages incurred by its customer for its failure to give its customer timely advice that it has received a notice of nonpayment. Notice also must be given if a depositary bank receives a notice of recovery under § 229.35(b). The notice to the customer required under this paragraph also may satisfy the notice requirement of § 229.13(g) if the depositary bank invokes the reasonable cause exception of § 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets the other requirements of § 229.13(g).

*XX. Section 229.34 Warranties*

A. 229.34(a) Warranty of Returned Check

1. This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C., Regulation J, or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment. (See the Commentary to § 229.30(f).) The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§ 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42.)

B. 229.34(b) Warranty of Notice of Nonpayment

1. This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.33. The requirements of § 229.33 that are not covered by the warranty are subject to the liability provisions of § 229.38. These warranties are designed to give the depositary bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See Commentary on § 229.33(a).)

C. 229.34(c) Warranty of Settlement Amount, Encoding, and Offset

1. Paragraph (c)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under U.C.C. 4–301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting, returning, or depositary bank, the transferor bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing) that will indicate the total of the checks or returned checks. Paragraph (c)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (c)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of the magnetic ink encoding that was placed on the item after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Under U.C.C. 4–209(a), only the encoder (or the encoder and the depositary bank, if the encoder is a customer of the depositary bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (c)(3) expands on the U.C.C. by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the U.C.C., the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (c)(3) provides that the warranty is made to banks in the return chain as well.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (c)(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (c)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (c)(4) provides that the paying bank may set off any excess settlement made against settlement owed to the presenting bank for checks presented subsequently.

D. 229.34(d) Damages

1. This paragraph adopts for the warranties in § 229.34 (a), (b), and (c) the damages provided in U.C.C. 4–207(c) and 4A–506(b). (See definition of interest compensation in § 229.2(oo).)

E. 229.34(e) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of U.C.C. 3–119.

*XXI. Section 229.35 Indorsements*

A. 229.35(a) Indorsement Standards

1. This section and Appendix D require banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. The standard provides for indorsements by all collecting and returning banks, plus a unique standard for depositary bank indorsements. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The regulation places a duty on banks to ensure that their indorsements are legible. The indorsement standard specifies the information each indorsement must contain and its location and ink color.

2. The indorsement standard requires that the nine-digit routing number of the depositary bank be wholly contained in an area on the back of the check from 3.0 inches from the leading edge to 1.5 inches from the trailing edge of the check. This permits banks to use encoding equipment that measures from either the leading or trailing edge of the check to place indorsements in this area. The standard does not require that the entire depositary bank indorsement be contained within the specified area, but checks will be handled most efficiently if depositary banks place as much information as possible within the designated area to ensure that the information is protected from being overstamped by subsequent indorsements. The location requirement for subsequent collecting bank indorsements (not including returning bank indorsements) limits these indorsements to the area on the back of the check from the leading edge to 3.0 inches from the leading edge of the check. The area from the trailing edge of the check to 1.5 inches from the trailing edge is commonly used for the payee indorsement.

3. The standard requires depositary banks to use either purple or black ink. The Board encourages depositary banks to indorse checks in purple ink where possible, because use of a unique ink color will facilitate the speedy identification of the depositary bank. Black ink, however, may be used when use of purple ink is not feasible, such as where a bank uses the same equipment to apply both depositary bank and subsequent collecting bank indorsements, and the equipment has only one source of ink.

4. The standard requires subsequent collecting banks to use an ink color other than purple for their indorsements. The standard also requires the depositary bank's indorsement to include its nine-digit routing number set off by arrows, the bank's name and location, and the indorsement date, and permits the indorsement to include other identifying information.

5. The standard does not include the fractional routing number for depositary banks; however, a bank may include its fractional routing number or repeat its nine-digit routing number in its indorsement. If a depositary bank includes its routing number in its indorsement more than once, paying and returning banks will be able to identify the depositary bank more readily. Depositary banks should not include information that can be confused with required information. For example, a nine-digit zip code could be confused with the nine-digit routing number.

6. A depositary bank is not required to place a street address in its indorsement; however, a bank may want to put an address in its indorsement in order to limit the number of locations at which it must accept returned checks. In instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to accept returned checks at a branch or head office consistent with the routing number. Banks should note, however, that § 229.32 requires a depositary bank to accept returned checks at the location(s) it accepts forward collection checks. The inclusion of a depositary bank's telephone number where it would receive notices of large-dollar returns in its indorsements is optional.

7. Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (See U.C.C. 4–207(a) and 4–208(a).) Use of guarantee language in indorsements, such as ''P.E.G.'' (''prior endorsements guaranteed''), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depositary bank. Subsequent collecting bank indorsements may not include this language.

8. The standard for returning banks requires a returning bank to apply an indorsement that avoids the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge—the area reserved for the payee and depositary bank indorsements. Returning bank indorsements may differ from subsequent collecting bank indorsements. The use of various methods to process returns using a variety of equipment also may cause returning bank indorsements to vary substantially in form, content, and placement on the check. Thus, a returning bank indorsement may be on the face of the check or on the back of the check. A returning bank indorsement may not be in purple ink. No content requirements have been adopted for the returning bank indorsement.

9. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

10. The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depositary bank indorsement, thus making the depositary bank indorsement unreadable.

11. The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the

identifiability and legibility of the depositary bank indorsement by staying clear of the area reserved for the depositary bank indorsement.

12. Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depositary bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depositary bank that made the depositary bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depositary and paying banks may shift these risks to their customers by agreement.

13. The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for returning banks. The standard requires collecting and returning banks to indorse the check for tracing purposes.

B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depositary bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depositary bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depositary bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depositary bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then either could continue the return to the depositary bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depositary bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under § 229.38.

5. This liability is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank also may recover from a prior collecting bank as provided in §§ 229.30(b) and 229.31(b). This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31(b). This paragraph does not affect a paying bank's accountability for a check under U.C.C. 4–215(a) and 4–302. Nor does this paragraph affect a collecting bank's accountability under U.C.C. 4–213 and 4–215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing U.C.C. sections. The term final settlement in §§ 229.31 (c), 229.32 (b), and 229.36(d) is intended to be consistent with the use of the term final settlement in the U.C.C. (e.g., U.C.C. 4–213, 4–214, and 4–215). (See also § 229.2(cc) and Commentary.)

6. This paragraph also provides that a bank may have the rights of a holder based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a) and Appendix D.

7. This paragraph affects the following provisions of the U.C.C., and may affect other provisions:

a. Section 4–214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4–214(a) would continue to permit a depositary bank to recover a provisional settlement from its customer. (See § 229.33(d).)

b. Section 3–415 and related provisions (such as section 3–503), in that such provisions would not apply as between banks, or as between the depositary bank and its customer.

C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words ''pay any bank,'' as required by the U.C.C. (See U.C.C. 4–201(b).) Use of this language in a depositary bank's indorsement will make it more difficult for other banks to identify the depositary bank. The indorsement standard in Appendix D prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

D. 229.35(d) Indorsement for Depositary Bank

1. This section permits a depositary bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depositary bank. If the indorsing bank applies the depositary bank's indorsement, checks will be returned to the depositary bank. If the indorsing bank does not apply the depositary bank's indorsement, by agreement with the depositary bank it may apply its own indorsement as the depositary bank indorsement. In that case, the depositary bank's own indorsement on the check (if any) should avoid the location reserved for the depositary bank. The actual depositary bank remains responsible for the availability and other requirements of Subpart B, but the bank indorsing as depositary bank is considered the depositary bank for purposes of Subpart C. The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depositary bank.

2. Because the depositary bank for Subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of Subpart C under § 229.37.

*XXII. Section 229.36 Presentment and Issuance of Checks*

A. 229.36(a) Payable Through and Payable at Checks

1. For purposes of Subpart C, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33 are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.

B. 229.36(b) Receipt at Bank Office or Processing Center

1. This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.32(a) because presentment of checks differs from delivery of returned checks.

2. The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. 4–204(c).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it requests presentment of checks bearing a particular routing number only at the location designated for receipt of forward collection checks bearing that routing number.

b. i. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers*, published by Thomson Financial Publishing Inc., which lists a city and state address for each routing number. Checks generally are handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As the payor bank has selected the payable-through bank as the point through which presentment is to be made, it is proper to treat the payable-through bank as the paying bank for purposes of this section.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank generally may control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank normally would deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

c. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3–111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

d. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is ''San Francisco, California,'' each office in San Francisco must accept presentment. The designation of an address on the check generally is in the control of the paying bank.

3. This paragraph may affect U.C.C. 3–111 to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

C. 229.36(c) Truncation

1. Truncation includes a variety of procedures in which the physical check is held or delayed by the depositary or collecting bank, and the information from the check is transmitted to the paying bank electronically. Presentment takes place when the paying bank receives the electronic transmission. This process has the potential to improve the efficiency of check processing, and express provision for truncation and electronic presentment is made in U.C.C. 4–110 and 4–406(b). This paragraph allows truncation by agreement with the paying bank; however, such agreement may not prejudice the interests of prior parties to the check. For example, a truncation agreement may not extend the paying bank's time for return. Such an extension could damage the depositary bank, which must make funds available to its customers under mandatory availability schedules.

D. 229.36(d) Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. 4–201 during forward collection of a check. That U.C.C. section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depositary bank's customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. 4–215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning or depositary bank to which it returns a check under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4–202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in § 229.2(cc).)

E. 229.36(e) Issuance of Payable Through Checks

1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend ''payable through'' followed by the name and location of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check processing region. (This section does not affect § 229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.38. For example, a bank by which a payable-through check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely-dispersed branches may be liable under this section if it labels all of its checks as ''payable through'' a single branch and includes the name, address, and four-digit routing symbol of another branch.

These checks would not be payable through another bank and should not be labeled as payable-through checks. (All of a bank's offices within the United States are considered part of the same bank; see § 229.2(e).) In this example, the bank by which the checks are payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, due to the mislabeled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

F. 229.36(f) Same-Day Settlement

1. This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a check on the same day the check is presented in order to avail itself of the ability to return the check on its next banking day under U.C.C. 4–301 and 4–302. This paragraph does not apply to checks presented for immediate payment over the counter. Settling for a check under this paragraph does not constitute final payment of the check under the U.C.C. This paragraph does not supersede or limit the rules governing collection and return of checks through Federal Reserve Banks that are contained in Subpart A of Regulation J (12 CFR part 210).

2. Presentment requirements.

a. Location and time.

i. For presented checks to qualify for mandatory same-day settlement, information accompanying the checks must indicate that presentment is being made under this paragraph—e.g. ''these checks are being presented for same-day settlement''—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the check or checks must be presented at a location designated by the paying bank for receipt of checks for same-day settlement by 8:00 a.m. local time of that location. The designated presentment location must be a location at which the paying bank would be considered to have received a check under § 229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of § 229.36(f), the paying bank agrees to accept checks at that location for the purposes of § 229.36(b).

ii. The designated presentment location also must be within the check processing region consistent with the nine-digit routing number encoded in magnetic ink on the check. A paying bank that uses more than one routing number associated with a single check processing region may designate, for purposes of this paragraph, one or more locations in that check processing region at which checks will be accepted, but the paying bank must accept any checks with a routing number associated with that check processing region at each designated location. A paying bank may designate a presentment location for traveler's checks with an 8000-series routing number anywhere in the country because these traveler's checks are not associated with any check processing region. The paying bank, however, must accept at that presentment location any other checks for which it is paying bank that have a routing number consistent with the check processing region of that location.

iii. If the paying bank does not designate a presentment location, it must accept presentment for same-day settlement at any location identified in § 229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. A paying bank and a presenting bank may agree that checks will be accepted for same-day settlement at an alternative location (e.g., at an intercept processor located in a different check processing region) or that the cut-off time for same-day settlement be earlier or later than 8:00 a.m. local time.

iv. In the case of a check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the check is sent for payment or collection.

b. Reasonable delivery requirements. A check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph (f)(1). Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its non-business hours, leaving the checks at the presentment location constitutes effective presentment.

c. Sorting of checks. A paying bank may require that checks presented to it for same-day settlement be sorted separately from other forward collection checks it receives as a collecting bank or returned checks it receives as a returning or depositary bank. For example, if a bank provides correspondent check collection services and receives unsorted checks from a respondent bank that include checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph (f)(2). If the collecting bank receives sorted checks from its respondent bank, consisting only of checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those checks and must make settlement in accordance with this paragraph.

3. Settlement

a. If a bank presents a check in accordance with the time and location requirements for presentment under paragraph (f)(1), the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or return the check prior to the time for settlement. (This return deadline is subject to extension under § 229.30(c).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer). The presenting bank may agree with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the check is received by the paying bank. Under the provisions of § 229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also § 229.39(d).)

b. Checks that are presented after the 8 a.m. (local time) presentment deadline for same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the checks are presented to the paying bank. Checks presented after the paying bank's cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for checks presented on these days (e.g., by opening their back office operations or by using an intercept processor). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed.

If the paying bank closes on a business day and checks are presented to the paying bank in accordance with paragraph (f)(1), the paying bank is accountable for the checks unless it settles for or returns the checks by the close of Fedwire on its next banking day. In addition, checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the U.C.C. midnight deadline (U.C.C. 4–301 and 4–302) and this regulation's expeditious return and notice of nonpayment provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in § 229.2(oo), to the presenting bank for the value of the float associated with the check from the day of the voluntary closing until

the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under § 229.38(e) or U.C.C. 4–109(b).

5. Good faith. Under § 229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in § 229.2(nn) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C. and may affect other sections or provisions:

a. Section 4–204(b)(1), in that a presenting bank may not send a check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (f)(1).

b. Section 4–213(a), in that the medium of settlement for checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank's cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4–301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

d. Section 4–302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

*XXIII. Section 229.37 Variations by Agreement*

A. This section is similar to U.C.C. 4–103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. 4–103(a) (which in turn follows U.C.C. 1–201(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to section 4–103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in § 229.36(c).

B. The Board has not followed U.C.C. 4–103(b), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the U.C.C.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

1. A depositary bank may authorize another bank to apply the other bank's indorsement to a check as the depositary bank. (See § 229.35(d).)

2. A depositary bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (See § 229.32(a).)

3. A depositary bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depositary bank's customer or prior indorser in the area of the depositary bank indorsement. (See § 229.38(d).)

4. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depositary bank. (See § 229.38(d).)

5. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (See § 229.35(a).)

6. A bank may agree to accept returned checks without the indorsement of a prior bank. (See § 229.35(a).)

7. A presenting bank may agree with a paying bank to present checks for same-day settlement at a location that is not in the check processing region consistent with the routing number on the checks. (See § 229.36(f)(1)(i).)

8. A presenting bank may agree with a paying bank to present checks for same-day settlement by a deadline earlier or later than 8:00 a.m. (See § 229.36(f)(1)(ii).)

D. The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

*XXIV. Section 229.38 Liability*

A. 229.38(a) Standard of care; liability; measure of damages

1. The standard of care established by this section applies to any bank covered by the requirements of Subpart C of the regulation. Thus, the standard of care applies to a paying bank under §§ 229.30 and 229.33, to a returning bank under § 229.31, to a depositary bank under §§ 229.32 and 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depositary bank under § 229.32(d), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by U.C.C. 1–203 and 4–103(a) and includes a duty to act in good faith, as defined in § 229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see § 229.35(d)). The measure of damages stated derives from U.C.C. 4–103(e) and 4–202(c). This subpart does not absolve a collecting bank of liability to prior collecting banks under U.C.C. 4–201.

3. Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux* v. *Van Wyk,* 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp.* v. *Prospect Nat'l Bank,* 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under U.C.C. 4–402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B. 229.38(b) Paying Bank's Failure To Make Timely Rreturn

1. Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by § 229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's accountability for missing its midnight or other deadline under the U.C.C., (e.g., sections 4–215 and 4–302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

C. 229.38(c) Comparative negligence

1. This paragraph establishes a ''pure'' comparative negligence standard for liability under Subpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each

example, it is assumed that the returned check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a).

2. Examples.

a. If a depositary bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depositary bank or find its routing number, the paying or returning bank's liability to the depositary bank would be reduced or eliminated.

b. If the depositary bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank or find its routing number, the paying or returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depositary bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.

c. If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depositary bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

D. 229.38(d) Responsibility for Certain Aspects of Checks

1. Responsibility for back of check. The indorsement standard in § 229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank or depositary bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

2. Responsibility for payable-through checks.

a. This paragraph provides that the bank by which a payable-through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable-through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable-through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable-through bank.

b. Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns the amount of $2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable-through check is payable would be liable under paragraph (a) only for checks in amounts up to $2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of $2,500 or more.

3. Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

E. 229.38(e) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of U.C.C. 4–109(b).

F. 229.38(f) Exclusion

1. This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and (b), and the bona fide error provision of 611(c) of the Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in Subpart C.

G. 229.38(g) Jurisdiction

1. The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

H. 229.38(h) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the Commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

*XXV. Section 229.39 Insolvency of Bank*

A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection or return and are derived from U.C.C. 4–216. They are intended to apply to all banks.

B. 229.39(a) Duty of Receiver

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Preference Against Paying or Depositary Bank

1. This paragraph gives a bank a preferred claim against a closed paying or depositary bank that finally pays a check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

D. 229.39(c) Preference Against Paying, Collecting, or Depositary Bank

1. This paragraph gives a bank a preferred claim against a closed collecting, paying, or returning bank that receives settlement but does not settle for a check. (See Commentary to § 229.35(b) for discussion of prior and subsequent banks.) As in the case of § 229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

E. 229.39(d) Preference Against Presenting Bank

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(c)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

F. 229.39(e) Finality of Settlement

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

*XXVI. Section 229.40 Effect on Merger Transaction*

A. When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term merger transaction is defined in

§ 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for expeditious return (§ 229.30).

2. The returning bank's responsibility for expeditious return (§ 229.31).

3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depositary bank that has merged with the returning bank (§ 229.31(a)).

4. Where the depositary bank must accept returned checks (§ 229.32(a)).

5. Where the depositary bank must accept notice of nonpayment (§ 229.33(c)).

6. Where a paying bank must accept presentment of checks (§ 229.36(b)).

*XXVII. Section 229.41 Relation to State Law*

A. This section specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

*XXVIII. Section 229.42 Exclusions*

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious return and notice of nonpayment requirements of Subpart C of this regulation. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

*XXIX. Appendix C—Model Forms, Clauses, and Notices*

A. Introduction

1. Appendix C contains model forms, clauses, and notices that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the model forms, clauses, and notices properly will be in compliance with the disclosure requirements of the regulation.

2. Certain information that must be inserted by a bank using the forms is italicized within parentheses in the text of the forms. Some forms contain alternative clauses, and these are set forth in brackets and separated by the word ''or.'' Banks may make certain changes in the format or content of the model forms and delete material that is inapplicable without losing the Act's protection from liability for banks that use the forms properly. For example, if a bank does not take advantage of the § 229.13 exceptions, it may delete the material relating to those exceptions. The rearrangement of the model forms, clauses, or notices may not be so extensive, however, as to affect the substance, clarity, or meaningful sequence of the forms. Acceptable changes include, for example:

a. Using ''customer'' and ''bank'' instead of pronouns.

b. Not using bold type for headings.

c. Incorporating certain state law ''plain English'' requirements.

3. Shorter time periods for availability may always be substituted for time periods used in the model forms, clauses, or notices.

4. Banks may also add information related to their availability policies. For example, a bank might indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could provide in its disclosure a telephone number to be used if a customer has an inquiry regarding a deposit.

5. Banks are cautioned against using the forms, clauses, or notices without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using a model form will be in compliance with the Act and the regulation only if its disclosures correspond to the bank's availability policy.

B. Models

1. Models C–1 through C–5 generally.

a. These forms are models for the specific availability policy disclosure described in § 229.16 of the regulation. The forms accommodate a variety of availability policies, ranging from policies of next-day availability to holds on a blanket basis up to the maximum time allowed in the regulation. Model C–3 reflects the additional disclosures discussed in §§ 229.16(b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

b. As already noted, there are several places in the forms where information must be inserted. This information includes the bank's name and cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the original number (such as first, second, etc.) of the business day the funds will become available.

c. Models C–1 through C–5 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in the model clauses (Models C–6 through C–11). A bank using one of the model forms should also consider whether it must incorporate one or more of the model clauses.

d. While § 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits (direct deposits) be made available on the day the bank receives the funds. Model Forms C-l through C–5 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

e. Banks that have used earlier versions of the model forms, clauses, or notices (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering or reprinting supplies of forms.

2. Model C–1. A bank may use this form when its policy is to make funds from all deposits available on the first business day after a deposit is made. This form may also be used by banks that provide immediate availability by substituting the word ''immediately'' in place of ''on the first business day after the day we receive your deposit.''

3. Model C–2. A bank may use this form when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new account and other exceptions in § 229.13 of the regulation.

4. Model C–3. A bank may use this form when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this form also reserves the right to invoke the exceptions listed in § 229.13 of the regulation. A bank reserving the right to impose the cash withdrawal limitation in § 229.12(d) should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading ''Longer Delays May Apply.''

5. Model C–4. A bank may use this form when its policy is the same as that outlined in Model C–5. The only difference between Model C–5 and Model C–4 is that in the latter a chart showing the bank's availability policy for local and nonlocal checks is substituted for the narrative description in the former.

6. Model C–5. A bank may use this form when its policy is to impose delays to the full extent allowed by § 229.12 and to reserve the right to invoke the § 229.13 exceptions.

7. Models C–6 through C–11 generally. These model clauses must be incorporated into a bank's specific availability policy disclosure under certain circumstances. The commentary to each clause indicates when the clause is required.

8. Model C–6. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to place a hold on funds already on deposit when they cash a check for the customer, as discussed under § 229.19(e).

9. Model C–7. This clause must be incorporated in the specific availability disclosure by banks that reserve the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as discussed in § 229.19(e).

10. Model C–8. This clause must be incorporated in the specific availability policy disclosure by banks in check processing regions where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of the regulation. Banks using Model C–5 may insert this clause at the conclusion of the discussion titled ''Nonlocal checks.''

11. Model C–9. This clause must be incorporated in the specific availability policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by section 229.12(f). A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under § 229.16(b)(5).

12. Model C–10. This clause may be used to disclose cash withdrawal limitations under § 229.12. Banks using Model C–5 to disclose availability may substitute this clause for the sections titled ''Local checks'' and ''Nonlocal checks.''

13. Model C–11. This clause must be incorporated in the specific availability policy disclosure by credit unions seeking to satisfy the notice requirement of § 229.14(b). This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

14. Models C–12 through C–21 generally. These forms are models for various notices required by the regulation.

15. Model C–12. This form satisfies the written notice required under § 229.13(g) when a bank places a hold based on a § 229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a § 229.13 exception.

16. Model C–13. This form satisfies the same requirement as Model C–12, and the same instructions apply, except that Model C–13 is for use by a bank that invokes the reasonable cause exception in § 229.13. The form provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. Banks may disclose the reason for their doubting collectibility by checking the appropriate reason on the form. If the ''Other'' category is checked, the reason must be given.

17. Model C–14. This form satisfies the notice requirements of § 229.13(g)(2).

18. Model C–15. This form satisfies the notice requirements of § 229.13(g)(3).

19. Model C–16. This form satisfies the notice required under § 229.16(b)(2) when a bank with a case-by-case hold policy imposes a delay on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a § 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

20. Model C–17 and C–18. Either of these forms satisfies the notice requirement of § 229.18(b) (notice at locations where employees accept consumer deposits). Model C–17 is based on an availability policy that is the same as the schedule described in § 229.12 of the regulation and the policy reflected in models C–4 and C–5. Model C–18 may be used by a bank with a case-by-case availability policy.

21. Model C–19. This form satisfies the ATM notice requirement of § 229.18(c)(1).

22. Model C–20. This form satisfies the ATM notice requirement of § 229.18(c)(2) when receipt of deposits at off-premise ATMs is delayed under § 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

23. Model C–21. This form satisfies the notice requirements of § 229.18(a) for deposit slips.

15. In appendix F to part 229, the appendix heading is revised and the *New Mexico* heading and all text under the *New Mexico* heading are removed, to read as follows:

## Appendix F to Part 229—Official Board Interpretations; Preemption Determinations

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 20, 1995.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 95–23755 Filed 10–2–95; 8:45 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–NM–101–AD; Amendment 39–9362; AD 95–19–01]**

## Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes Equipped With BFGoodrich Evacuation Slides and Slide/Rafts

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Airbus Model A330 and A340 series airplanes equipped with certain BFGoodrich evacuation slides and slide/rafts. This action requires an inspection to detect the presence of certain discrepancies of the packboard associated with the evacuation slides and slide/rafts, and replacement or modification of the packboard unit, if necessary. It also requires the eventual modification of all affected packboard units. This amendment is prompted by reports indicating that these packboards have disengaged from the door mounting, due to cracking of the packboard and associated latch assembly that was incurred during hard landings. The actions specified in this AD are intended to prevent the packboard from disengaging from the door and restraining the door from fully opening, thereby preventing the evacuation slide from inflating and making both the slide and the door unusable during an emergency evacuation.

**DATES:** Effective October 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before December 4, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** During flight testing on one Airbus Model A340 series airplane, the packboard units partially disengaged from the door mountings during hard landings. This caused cracking of the packboard edge and subsequent breakage of the latch assembly that connects the packboard to the door mounting. Such cracking of the

packboard shell can cause the packboard to flex enough to cause this disengagement. The tolerance stack-up of the components holding the packboard to the door can result in inadequate engagement between the packboard rails, the latch assembly, and the rail adapter attachment. Should the packboard disengage from the door, it may then restrain the door from fully opening. This condition, if not corrected, could prevent the evacuation slide from inflating, thereby making both the slide and the associated door unusable during an emergency evacuation.

The FAA has reviewed and approved BFGoodrich Service Bulletin 5A2917/27/63–25–279, dated January 12, 1995, which describes procedures for inspecting the slide and slide/raft packboards (1) to detect cracking in the end panels, (2) to determine if an excessive amount of gap exists between the bottom of the packboard rail and the top of the packboard, and (2) to determine if the chamfered surface on the rail adapter is below the rail (not showing). The service bulletin describes procedures fro replacing the packboard unit if any of these conditions are found.

The FAA also has reviewed and approved BFGoodrich Service Bulletin 5A2917/27/63–25–278, Revision 1, dated July 14, 1995, which describes procedures for modifying the packboard assemblies. This modification entails replacing the latch and anchor block assemblies with new one-piece assemblies; installing new rail adaptors and associated setscrews; removing the portability handles from Type A door units; and reinforcing the packboards of certain Type A doors.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the packboard from disengaging from the door and restraining the door from fully opening, thereby preventing the evocation slide from inflating and making both the slide and the door unusable during an emergency evacuation. This AD requires a one-time inspection of the packboard unit to detect various discrepancies, and either the replacement or modification of the packboard if any of these conditions exist. This AD also requires that all affected packboards eventually be modified. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model A330 or A340 series airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour per airplane to accomplish the inspection, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of the inspection requirement of this AD would be $60 per airplane.

The modification required by this AD action would require 2 work hours per slide to accomplish, at an average labor charge of $60 per work hour. There are 8 affected slides per airplane. Required parts would be provided by BFGoodrich at no cost to operators. Based on these figures, the total cost impact of the modification requirement of this AD would be $120 per slide, or $960 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–101–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–01 Airbus: Amendment 39–9362. Docket 95–NM–101–AD.

*Applicability:* Model A330 and A340 series airplanes; equipped with BFGoodrich evacuation slides or slide/rafts having part numbers and packboards as listed in Table 1 (Effectivity) of BFGoodrich Service Bulletin 5A2917/27/63–25–278, Revision 1, dated July 14, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD.

In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously. To prevent the packboard from disengaging from the door and restraining the door from fully opening, thereby preventing the evacuation slide from inflating and making both the slide and the door unusable during an emergency evacuation, accomplish the following:

(a) Within 450 flight hours after the effective date of this AD, inspect the packboard unit of the slide and/or slide/raft in accordance with paragraphs 2A., 2B., and 2C. of the Accomplishment Instructions of BFGoodrich Service Bulletin 5A2917/27/63–25–279, dated January 12, 1995. If any discrepancy is found during this inspection, prior to further flight, accomplish either paragraph (a)(1) or (a)(2) of this AD:

(1) Replace the packboard unit in accordance with BFGoodrich Service Bulletin 5A2917/27/63–25–279, dated January 12, 1995; or

(2) Modify the packboard unit in accordance with BFGoodrich Service Bulletin 5A2917/27/63–25–278, Revision 1, dated July 14, 1995. After such modification, no further action is required by this AD.

(b) Within 36 months after the effective date of this AD, modify the packboard of the evacuation slide and slide/raft in accordance with BFGoodrich Service Bulletin 5A2917/27/63–25–278, Revision 1, dated July 14, 1995. This modification constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with BFGoodrich Service Bulletin 5A2917/27/63–25–279, dated January 12, 1995. The modification shall be done in accordance with BFGoodrich Service Bulletin 5A2917/27/63–25–278, Revision 1, dated July 14, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 18, 1995.

Issued in Renton, Washington, on September 1, 1995.

Darrell M. Pederson,

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

[FR Doc. 95–22304 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 94–NM–255–AD; Amendment 39–9383; AD 95–20–05]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for cracking in the inboard strut-to-diagonal brace attach fittings, and repair or replacement, if necessary. This amendment requires an additional inspection of those attach fittings, and additional inspections in an area beyond that specified in the existing AD. This amendment also provides an optional terminating action for the required inspections, and expands the applicability of the existing AD to include additional airplanes. This amendment is prompted by reports of cracking and severing of the attach fittings. The actions specified by this AD are intended to prevent failure of the strut and separation of an engine from the airplane due to cracking of the inboard strut-to-diagonal brace attach fittings.

**DATES:** Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 79–17–07, amendment 39–3533 (44 FR 50033, August 27, 1979), which is applicable to certain Boeing Model 747 series airplanes, was published in the Federal Register on April 4, 1995 (60 FR 17030). The action proposed to continue to require repetitive visual inspections to detect cracking in the inboard strut-to-diagonal brace attach fittings, and replacement or repair of the cracking, if necessary. The action also proposed to add repetitive high frequency eddy current (HFEC) inspections to detect cracks of the attach fittings. Additionally, that action proposed to require that certain attach fittings with cracks be reinspected at shorter intervals, and to require subsequent replacement of the attach fittings of airplanes with certain known cracking. The action also proposed to expand the applicability of the rule to include additional affected airplanes, and provided an optional terminating action for the required inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA), on behalf of one of its members, requests that the FAA clarify that replacement of the aluminum attach fittings with steel ones, as described in revisions prior to Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, is an acceptable terminating action for the requirements of this AD.

The FAA concurs. This AD does not require any further action for operators that have replaced the aluminum fittings with steel ones, in accordance with Revisions 1 through 7 of Boeing Service Bulletin 747–54–2062. A note has been added to the final rule to reflect this clarification.

The commenter also requests that the proposed rule be clarified to specify that, for airplanes on which the fitting replacement has been accomplished, additional work would not be required to terminate the requirements of the AD, i.e., installation of the closure web and installation of anvil swaged bushings.

The FAA concurs. The additional work referenced by the commenter is not required to be accomplished as part of this AD. However, the installation of the closure web and installation of anvil swaged bushings, as described in Revision 7 of the service bulletin, are required to be accomplished as part of the strut modification program, mandated by AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), regardless of whether or not the aluminum attach fittings have been replaced with steel fittings. Table 2 of Boeing Service Bulletin 747–54A2159, ''Prior or Concurrent Service Bulletins'' (which is cited in AD 95–10–16), specifies that Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994 (which is cited in this AD), must be accomplished prior to or concurrent with the installations required by AD 95–10–16. A note has been added to the final rule to clarify this point.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 367 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 152 airplanes of U.S. registry will be affected by this AD.

The new actions that are required by this AD will take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact on U.S. operators of the new requirements of this AD is estimated to be $100,320, or $660 per airplane, per inspection cycle. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the terminating modification that would be provided by this AD action, it will take approximately 176 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,752 per airplane. Based on these figures, the total cost impact of the terminating modification will be $15,312 per airplane.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–3533 (44 FR 50033, August 27, 1979), and by adding a new airworthiness directive (AD), amendment 39–9383, to read as follows:

95–20–05 Boeing: Amendment 39–9383. Docket 94–NM–255–AD. Supersedes AD 79–17–07, Amendment 39–3533.

*Applicability:* Model 747 series airplanes, as listed in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of an engine, accomplish the following:

Note 2: Paragraph (a) of this AD restates the requirements for initial and repetitive visual inspections contained in paragraphs A., and C., respectively, of AD 79–17–07, amendment 39–3583. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 79–17–07, paragraph (a) of this AD requires that the next scheduled inspection be performed within the intervals specified in (a)(1) or (a)(2), as applicable, after the last inspection performed in accordance with paragraph A. or C. of AD 79–17–07.

(a) For airplanes listed in Boeing Service Bulletin 747–54–2062, dated August 17, 1979: Prior to the accumulation of 5,000 total landings on the airplane, or within 500 hours time-in-service after September 4, 1979 (the effective date of AD 79–17–07, Amendment 39–3533), whichever occurs later, perform a visual inspection of the forward lower diagonal brace fittings of the inboard pylon

to detect cracking, in accordance with Boeing Service Bulletin 747–54–2062, dated August 17, 1979, or Revision 7, dated December 21, 1994; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. After the effective date of this AD, only Revision 7 of the service bulletin shall be used.

Note 3: Inspections performed prior to the effective date of this AD are considered to be in compliance with paragraph (a) of this AD if performed in accordance with Boeing Service Bulletin 747–54–2062, August 17, 1979; Revision 1, dated November 13, 1980; Revision 2, dated March 19, 1981; Revision 3, dated August 28, 1981; Revision 4, dated June 30, 1982; Revision 5, dated June 1, 1984; Revision 6, dated October 2, 1986, or Revision 7, dated December 21, 1994.

(1) If no cracking is detected, repeat the inspections at intervals not to exceed 1,000 landings until all affected fittings are replaced with steel fittings in accordance with Revision 7 of the service bulletin.

(2) If any cracking is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD until the inspections required by paragraph (b) of this AD are accomplished.

(i) Repair or replace the cracked fitting in accordance with the service bulletin; or

(ii) Rework the cracked fitting in accordance with the service bulletin as required by paragraph (b) of this AD. Thereafter, repeat the inspections at intervals not to exceed 250 landings until the reworked fitting is replaced with a serviceable fitting, or until the inspections required by paragraph (b) of this AD are accomplished.

(b) For airplanes as listed in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994: Perform a detailed visual inspection and a surface high frequency eddy current (HFEC) inspection to detect cracking of the inboard strut-to- diagonal brace attach fittings, in accordance with Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which a cracked fitting has been reworked in accordance with Boeing Service Bulletin 747–54–2062, dated August 17, 1979: Perform the inspections within 250 landings since the last inspection performed in accordance with paragraph (a)(2)(ii) of this AD.

(2) For airplanes other than those identified in paragraph (b)(1) of this AD: Perform the inspections at the earlier of the times specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 total landings on the airplane, or within 1,000 landings after the effective date of this AD, whichever occurs later; or

(ii) Within 1,000 landings since the last inspection performed in accordance with paragraph (a) of this AD.

(c) If no cracking is detected during the inspections required by paragraph (b) of this AD, repeat the inspections thereafter at intervals not to exceed 1,000 landings.

(d) If more than one crack is found during any inspection required by this AD, or if any crack is detected that is beyond the limits specified in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, prior to further flight, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(e) If any transverse or longitudinal crack is found during the inspection required by paragraph (b) of this AD, and that crack is within the limits specified by Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994: Prior to further flight, stop drill the crack in accordance with the service bulletin, and accomplish the requirements of either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For any transverse crack that is found, accomplish the following:

(i) Prior to further flight, remove the affected fastener and perform an open-hole HFEC inspection to detect cracking of the fastener hole, in accordance with the service bulletin. Thereafter, repeat this inspection within 125 landings.

(ii) Repeat the inspections required by paragraph (b) of this AD within 125 landings after performing them initially.

(iii) If any crack is found during the inspections required by this paragraph and the crack is beyond the limits specified in the service bulletin, prior to further flight, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(iv) Prior to the accumulation of 250 landings following the detection of the transverse cracking, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(2) For any longitudinal crack that is found, accomplish the following:

(i) Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 250 landings.

(ii) Prior to the accumulation of 1,000 landings following detection of the longitudinal cracking, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(f) Replacement of the attach fittings of the strut-to-diagonal brace with steel fittings, in accordance with Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, constitutes terminating action for the requirements of this AD.

Note 4: Replacement of the attach fittings of the strut to diagonal brace with steel fittings prior to the effective date of this AD is considered in compliance with paragraph (f) of this AD if performed in accordance with Boeing Service Bulletin 747–54–2062, Revision 1, dated November 13, 1980; Revision 2, dated March 19, 1981; Revision 3, dated August 28, 1981; Revision 4, dated June 30, 1982; Revision 5, dated June 1, 1984; or Revision 6, dated October 2, 1986.

Note 5: This AD does not require certain additional work (to seal a gap between the fitting and the existing closure web, or replacement of the bushings in the diagonal brace fitting with anvil swaged bushings) as described in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994. However, these installations are required to be accomplished as part of AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995). Table 2 of Boeing Service Bulletin 747–54A2159, ''Prior or Concurrent Service Bulletins'' (which is cited in AD 95–10–16), specifies that Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994 (which is cited in this AD), must be accomplished prior to or concurrent with the installations required by AD 95–10–16.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the

(i) The actions shall be done in accordance with Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on September 21, 1995.

S.R. Miller,

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

[FR Doc. 95–23914 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 94–NM–200–AD; Amendment 39–9378; AD 95–19–16]**

## Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes Equipped With Fairchild Model F800 Flight Data Recorders, Installed in Accordance With Supplemental Type Certificate (STC) SA7255SW-D

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes, that requires modification of the electrical power installation of the

flight data recorder, replacement of the currently installed socket box for ground power with a reworked socket box, and performance of checks and tests. This amendment is prompted by reports indicating that the generators may shut down due to an intermittent relay failure of the flight data recorders. The actions specified by this AD are intended to prevent loss of electrical power to the airplane due to generator outage.

**DATES:** Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Falcon Jet Corporation, P.O. Box 967, Little Rock, Arkansas 72203–0967. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes equipped with Fairchild Model F800 flight data recorders, installed in accordance with Supplemental Type Certificate (STC) SA7255SW-D, was published in the Federal Register on January 18, 1995 (60 FR 3583). That action proposed to require modification of the electrical power installation of the flight data recorder, replacement of the currently installed socket box for ground power with a modified socket box, and performance of checks and tests.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that all references to the ''modified ground power socket box'' be changed to read ''reworked ground power socket box.'' The commenter states that the latter phrase is used in the relevant service instructions, and considers that there will be less potential for confusion if the terminology in the AD is parallel to that in the service instructions. The FAA concurs. The terminology in the final rule has been revised accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $286 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,788, or $766 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–16 Dassault Aviation: Amendment 39–9378. Docket 94–NM–200–AD.

*Applicability:* Model Mystere-Falcon 900 series airplanes having serial numbers 53 through 139 inclusive, equipped with Fairchild Model F800 flight data recorders, installed in accordance with Supplemental Type Certificate (STC) SA7255SW–D; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the airplane due to generator outage, accomplish the following:

(a) At the next scheduled inspection, but no later than 60 days after the effective date of this AD, modify the electrical power installation for the flight data recorder, in accordance with paragraph 3.C.(1), Part 900–54–1, of Falcon Jet Corporation Service Bulletin 900–54 (F900 31–30), dated October 14, 1994, or Revision 1 (F900 31–1), dated November 17, 1994. Prior to further flight subsequent to the accomplishment of this modification, perform the checks and tests in accordance with paragraph 3.D.(1), Part 900–54–1, of either service bulletin.

(b) Within 1 year after the effective date of this AD, replace the currently installed socket box for ground power with a reworked socket box, in accordance with paragraph

3.C.(2), Part 900–54–2, of Revision 1 of Falcon Jet Corporation Service Bulletin 900–54 (F900 31–1), dated November 17, 1994. Prior to further flight, subsequent to the accomplishment of this installation, perform the checks and tests, in accordance with paragraph 3.D.(2), Part 900–54–2, of Revision 1 of the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Falcon Jet Corporation Service Bulletin 900–54 (F900 31–30), dated October 14, 1994; or Falcon Jet Corporation Service Bulletin 900–54, Revision 1 (F900 31–1), dated November 17, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, P.O. Box 967, Little Rock, Arkansas 72203–0967. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on September 13, 1995.

John J. Hickey,

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

[FR Doc. 95–23214 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–13–U**

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## 14 CFR Part 39

**[Docket No. 94–NM–211–AD; Amendment 39–9381; AD 95–20–03]**

## Airworthiness Directives; Learjet Model 24, 25, 28, 29, 31, 35, 36, and 55 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Learjet Model 24, 25, 31, 35, and 36 series airplanes, and all Learjet Model 28, 29, and 55 series airplanes, that currently requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit flight above an altitude of 41,000 feet. The actions specified by that AD are intended to limit the airplane operating altitude due to a possible failure of the outflow/safety valves, which could result in rapid decompression of the airplane. This amendment adds a requirement for replacement of certain outflow/safety valves, which, when accomplished, constitutes terminating action for the previously required AFM limitation.

**DATES:** Effective November 2, 1995.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of November 2, 1995.

The incorporation by reference of Allied Signal Aerospace Alert Service Bulletin 102850–21–A4021, Revision 2, dated October 6, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 3, 1995 (59 FR 64844, December 16, 1994).

**ADDRESSES:** The service information referenced in this AD may be obtained from Allied Signal, Inc., Controls & Accessories, 11100 N. Oracle Road, Tucson, Arizona 85737–9588; telephone (602) 469–1000; and Learjet, Inc., P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; 90712; telephone (310) 627–5336; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–26–01, amendment 39–9097 (59 FR 64844, December 16, 1994), which is applicable to certain Learjet Model 24, 25, 31, 35, and 36 series airplanes, and all Learjet Model 28, 29, and 55 series airplanes, was published in the Federal Register on March 16, 1995 (60 FR 14231). The action proposed to continue to require a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit flight above an altitude of 41,000 feet. The action also proposed to require replacement of certain outflow/safety valves, which, when accomplished, constitutes terminating action for the previously required AFM limitation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The only commenter, Learjet, Inc., requests that the AD be written as one AD against the outflow/safety valves, rather than against Learjet airplanes. The commenter believes this would better serve the public and that confusion would result if several AD's are issued against the various aircraft that use the affected valve. Learjet states that it is not customary to issue AD's against the aircraft for engine problems, seat belt buckles, or any other appliance that is used on more than one aircraft.

The FAA does not concur with the commenter's request. The FAA responds by noting that its general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason for this is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents ''unknowing non-compliance'' on the part of the operator. The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and numbers of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.

In light of this, since the FAA is aware that the outflow/safety valves having the particular part numbers specified in this AD are installed only on the Learjet airplanes identified in the applicability of this AD, the FAA finds it appropriate in this case to issue the AD against the airplane. The FAA may consider addressing outflow/safety valves having other part numbers in subsequent rulemaking actions, applicable to the airplanes on which the valves are installed.

The commenter also requests that certain Learjet service bulletins and the address for obtaining those service bulletins be cited in lieu of the Allied Signal Aerospace service bulletins cited in the proposal. The commenter indicates that Allied Signal Aerospace does not mail their service bulletins to operators of Learjet airplanes. The commenter also points out that the Learjet service bulletins transmit the same Allied Signal Aerospace service bulletins referenced in the AD. The commenter also indicates that the Allied Signal Aerospace service bulletins do not describe procedures for replacement of certain outflow/safety valves; therefore, the commenter has submitted a suggested rewrite of the service bulletin description that appeared in the preamble of the proposed rule. Learjet contends that its service bulletins more accurately define the serial numbers of the airplanes on which suspect valves may be installed, and includes those serial numbers in a suggested rewrite of the applicability of the AD. Finally, the commenter adds that the Learjet service bulletins were approved by the FAA as an alternative method of compliance with AD 94–26–01.

The FAA concurs partially. In AD 94–26–01, the FAA cited the Allied Signal Aerospace service bulletins as the appropriate sources of service information; those citations were appropriately carried over into this AD. As explained in the preamble to the proposal, the FAA also reviewed and approved the Learjet service bulletins discussed by the commenter. While the Allied Signal Aerospace service bulletins do not contain specific procedures for replacement of the outflow/safety valves, those service bulletins do refer operators to the ''airplane manufacturer's instructions'' for the replacement procedures. Therefore, the Allied Signal Aerospace service bulletins are considered appropriate sources of service information for accomplishing the replacement.

In light of the commenter's remarks, however, the FAA has determined that the actions required by this AD may be accomplished in accordance with the procedures described in the Learjet service bulletins as well as the Allied Signal Aerospace service bulletins. Therefore, the final rule has been revised to reference both service information sources. In addition, the address for obtaining the Learjet service bulletins also has been added to the Addresses section of the preamble to this final rule. Further, the FAA has included in the applicability of this AD references to the Learjet service bulletins as sources for identification of airplane serial numbers on which suspect valves may be installed. (The applicability of the AD continues to reference the Allied Signal Aerospace service bulletins as the appropriate sources for identification of the affected outflow/safety valves.)

Learjet asks that the product identification statement (after the heading ''Airworthiness Directives'' at the beginning of the preamble to the rule) be reworded from ''Learjet Model 24, 25, 31, 35, 36, and 55 Series Airplanes, and Learjet Model 28 and 29 Airplanes'' to ''Certain Learjet Model 24, 25, 31, 35, and 36 and All Model 28, 29, and 55 Series Airplanes.'' Learjet suggests that similar wording should appear throughout the rule. The FAA concurs partially. The product identification statement at the beginning of the preamble of an AD simply denotes the name of the type certificate holder or product manufacturer and the model designations of the affected airplanes. The FAA does not generally include the words ''certain'' or ''all'' in that statement; it is kept to a minimal length. However, the preamble of the final rule has been revised to include the commenter's suggested change. Further, the FAA infers from Learjet's request that its airplanes should be designated as ''series'' airplanes; therefore, the final rule has been revised accordingly.

Learjet also requests that the statement of unsafe condition that relates to AD 94–26–01, which appeared in the Summary section of the preamble of the proposed rule, be revised. The proposed rule indicates that the actions specified by AD 94–26–01 are intended to ''prevent cracking and subsequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane.'' The commenter suggests that the actions specified by that AD are intended to ''limit the airplane operating altitude due to a possible failure of the outflow/safety valves, which could result in rapid decompression of the airplane.'' The FAA concurs with the commenter's request, and has revised the wording throughout the final rule accordingly.

Learjet also requests clarification of a paragraph that appeared in the preamble of the proposal that explains ''Note 1'' of the AD. That Note discusses the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Learjet asks if this paragraph addresses aircraft that no longer meet the original type design.

Although every effort was made to keep the language simple and clear in the paragraph referenced by the commenter, the FAA finds it apparent that some additional explanation is necessary to clarify for this commenter its intent. The paragraph referenced by the commenter merely explains the reason for the FAA's decision to include Note 1 in this AD. It does not change the substance of either the Note or of the regulatory effect of an AD, which the note is intended to explain. In response to the specific question posed by the commenter, in a literal sense, airplanes that have been altered ''no longer meet the original type design.'' However, as the Note states, that fact is irrelevant to the question of whether any airplane is subject to the AD; the applicability statement of the AD stands on its own.

Learjet also requests that the economic impact information presented in the preamble to the proposal be revised to reflect the most current data available with regard to number of affected airplanes. Learjet indicates that there are approximately 1,333 airplanes of the affected design in the worldwide fleet, and that 840 of those airplanes are on the U.S. Register. Learjet also suggests that the AD reflect an estimate of 3 work hours that will be necessary for operators to inspect the outflow/safety valves installed on its airplanes. The commenter also suggests that proposed paragraph (b) be rewritten to include a requirement to inspect the outflow/safety valves to determine their part number.

The FAA concurs partially. The FAA has revised the total number of airplanes affected by this AD, as suggested by the commenter. However, the FAA does not find it necessary to include an additional requirement for an inspection to determine the part number of the outflow/safety valves, since the applicability of the AD indicates that it applies only to those airplanes having outflow/safety valves that are identified in certain Allied Signal Aerospace service bulletins. The FAA acknowledges that it will be necessary for an operator to determine if this AD applies to its fleet, and has

revised the economic impact information, below, to add 3 work hours to the cost estimate, as suggested by the commenter, to account for determining if the specific part-numbered valves are installed.

Learjet also asks that the economic impact information be revised to specify that Allied Signal Aerospace is the appliance manufacturer. The FAA concurs, and has revised the information accordingly.

Learjet requests that the final paragraph of the economic impact information also be revised to specify that operators should already have complied with the AFM revision required by AD 94–26–01. The FAA concurs, and has revised the economic impact information accordingly.

Learjet also questions two paragraphs that appear in the preamble of the proposal. The first paragraph indicates that the AD does not warrant preparation of a Federalism Assessment; the second concerns the determination of the rule's economic impact on small entities (''regulatory flexibility''). The commenter suggests that a review of these two paragraphs may be necessary in light of the revised number of airplanes affected by the AD.

The FAA does not concur with the commenter's suggestion. Concerning the paragraph pertaining to the Federalism Assessment, Executive Order 12612 requires that every rule be assessed for its impact on state and local governments. In general, AD's will not have an effect on other government entities because the regulation of aviation is federally preempted by statute. State and local government are not delegated the authority to regulate aviation; therefore, there are no ''parallel'' local regulations that could be impacted by an AD. The paragraph concerning the Federalism Assessment is included in this rule merely to explain this required finding.

Regarding regulatory flexibility findings, very few AD's will ever reach the level of having a ''significant economic impact, positive or negative, on a substantial number of small entities,'' since either most aircraft operators do not meet the agency's criteria for small entities, or because the cost of an individual AD usually does not exceed the agency limit for significant impact. A statement concerning the impact, or lack of it (as in the case of this AD), is required to be included in the certification statement of each AD.

Learjet also asks that paragraph (a) of the proposal be revised so that the effective date of the AD is stated as ''Within 30 days after the effective date of this AD (if not previously accomplished per AD 94–26–01, amendment 39–9097) ....'' The FAA concurs partially. The requirement of paragraph (a) of this AD was required previously by AD 94–26–01 to be accomplished within 30 days after January 3, 1995, which is the effective date of that AD. Paragraph (a) of this AD merely restates the requirements of paragraph (a) of the existing AD. As allowed by the phrase, ''unless accomplished previously,'' which appears in the ''Compliance'' statement of the AD, if the requirement of paragraph (a) of that AD has already been accomplished, this final rule does not require that those actions be repeated. Therefore, the FAA finds it unnecessary to revise the compliance time specified in paragraph (a) of the final rule. However, to eliminate any confusion that may exist, the FAA has added a note to the final rule to clarify its intent with regard to restating paragraph (a) of AD 94–26–01.

Learjet also indicates that the requirement of paragraph (a) could be accomplished by inserting a copy of Learjet Temporary Flight Manual (TFM) Change 94–14, dated January 9, 1995 (for Model 24 series airplanes), or TFM Change 94–15, dated January 9, 1995 (for all models, including Model 24 series airplanes), into the AFM. The FAA concurs and has included a note after paragraph (a) of the final rule to reflect this information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,333 Model 24, 25, 28, 29, 31, 35, 36, and 55 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 840 airplanes of U.S. registry will be affected by this proposed AD.

The AFM revision currently required by AD 94–26–01 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact associated with the current AFM revision requirement of AD 94–26–01 on U.S. operators is estimated to be $50,400, or $60 per airplane.

However, based on information provided by the manufacturer, and based on the effective date of AD 94–26–01, the FAA assumes that the majority of U.S. operators will have already accomplished the AFM revision requirement. Therefore, any future economic impact of this AD can be assumed to be less than the ''total cost impact'' figure indicated above.

The removal and replacement of parts that are required by this new AD will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. (This estimate includes 3 work hours that are required to determine the valve serial number.) However, Allied Signal (the appliance manufacturer) advises that it will reimburse operators for the costs of removal and replacement. Therefore, based on this information, the total cost impact associated with determining the valve serial number is estimated to be $151,200, or $180 per airplane. (U.S. operators will incur no cost impact for the removal and replacement requirements.) This total cost impact figure is based on assumptions that no operator has yet accomplished these new requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9097 (59 FR 64844, December 16, 1994), and by adding a new airworthiness directive (AD), amendment 39–9381, to read as follows:

95–20–03 Learjet: Amendment 39–9381. Docket 94–NM–211–AD. Supersedes AD 94–26–01, Amendment 39–9097.

*Applicability:* Model 24, 25, 28, 29, 31, 35, 36, and 55 series airplanes having airplane serial numbers listed in the Learjet service bulletins listed below; and equipped with Allied Signal outflow/safety valves, number 130406–1 or 102850–5, as identified in Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995, or 102850–21–A4021, Revision 2, dated October 6, 1994; certificated in any category:

| Service bulletin reference | Service bulletin revision level | Service bulletin date |
|---|---|---|
| Learjet Service Bulletin SB 24/25–21–4 | Original | January 3, 1995. |
| Learjet Service Bulletin SB 28/29–21–8 | Original | January 3, 1995. |
| Learjet Service Bulletin SB 31–21–6 | Original | January 3, 1995. |
| Learjet Service Bulletin SB 35/36–21–19 | Original | January 3, 1995. |
| Learjet Service Bulletin SB 55/21–10 | Original | January 3, 1995. |

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 94–26–01, amendment 39–9097. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 94–26–01 have already been accomplished, this AD does not require that those actions be repeated.

To prevent rapid decompression of the airplane due to cracking and subsequent failure of certain outflow/safety valves, accomplish the following:

(a) Within 30 days after January 3, 1995 (the effective date of AD 94–26–01, amendment 39–9097), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Operation of the airplane at any altitude above 41,000 feet is prohibited.''

Note 3: Inserting a copy of Learjet Temporary Flight Manual Change 94–14, dated January 9, 1995 (for Model 24 series airplanes), or 94–15, dated January 9, 1995 (for all models, including Model 24 series airplanes), into the AFM is considered acceptable for compliance with the requirement of paragraph (a) of this AD.

(b) Within 18 months after the effective date of this AD, replace the outflow/safety valves, part numbers 130406–1 and 102850–5, as identified in Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995, or 102850–21–A4021, Revision 2, dated October 6, 1994, as applicable; or as identified in Learjet Service Bulletin SB 24/25–21–4, SB 28/29–21–8, SB 31–21–6, SB 35/36–21–19, or SB 55–21–10, all dated January 3, 1995, as applicable; with serviceable parts in accordance with the procedures described in the applicable service bulletin. Accomplishment of this replacement constitutes terminating action for the requirement of paragraph (a) of this AD; after the replacement has been accomplished, the previously required AFM limitation may be removed.

(c) As of January 3, 1995 (the effective date of AD 94–26–01, amendment 39–9097), no person shall install an outflow/safety valve, part number 130406–1 or 102850–5, as identified in Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995, or 102850–21–A4021, Revision 2, dated October 6, 1994, as applicable; or as identified in Learjet Service Bulletin SB 24/25–21–4, SB 28/29–21–8, SB 31–21–6, SB 35/36–21–19, or SB 55–21–10, all dated January 3, 1995, as applicable; on any airplane unless that valve is considered to be serviceable in accordance with the specifications contained in the Accomplishment Instructions of the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement shall be done in accordance with Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995; Allied Signal Aerospace Alert Service Bulletin 102850–21–A4021, Revision 2, dated October 6, 1994; Learjet Service Bulletin SB 24/25–21–4, dated January 3, 1995; Learjet Service Bulletin SB 28/29–21–8, dated January 3, 1995; Learjet Service Bulletin SB 31–21–6, dated January 3, 1995; Learjet Service Bulletin SB 35/36–21–19, dated January 3, 1995; or Learjet Service Bulletin SB 55–21–10, dated January 3, 1995; as applicable. The incorporation by reference of Allied Signal Aerospace Alert Service Bulletin 102850–21–A4021, Revision 2, dated October 6, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 3, 1995 (59 FR 64844). The incorporation by reference of the remainder of the documents listed was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied Signal, Inc., Controls & Accessories, 11100 N. Oracle Road, Tucson, Arizona 85737–9588; telephone (602) 469–1000; and Learjet, Inc., P.O. Box 7707, Wichita, Kansas 67277–7707. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on September 20, 1995.

Darrell M. Pederson,

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

[FR Doc. 95–23811 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 93–NM–219–AD; Amendment 39–9382; AD 95–20–04]**

## Airworthiness Directives; Lockheed Model L–1011–385–1 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–1011–385–1 series airplanes, that requires implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair, if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This amendment is prompted by a structural re-evaluation by the manufacturer that identified certain structural details where fatigue damage is likely to occur. The actions specified by this AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

**DATES:** Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385–1 series airplanes was published in the Federal Register on February 13, 1995 (60 FR 8206). That action proposed to require a revision to the FAA-approved maintenance inspection program to include a Supplemental Inspection Document (SID) program of structural inspections. The intent of these inspections is to detect fatigue cracking in order to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. The proposal also requires the repair of any cracking detected during those inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that the proposed compliance time of 6 months to incorporate a revision into the FAA-approved maintenance inspection program be extended to 12 months. The commenter requests this change to accommodate operators' scheduling and engineering workload.

The FAA concurs with this commenter's request to extend the compliance time. The FAA has determined that extending the compliance time by six additional months will not adversely affect safety, and will allow affected operators ample time to plan, schedule, and engineer the necessary changes required to revise the FAA-approved maintenance inspection program. Further, an initial compliance time of 12 months is consistent with the compliance times provided in other AD's that have been issued to require the implementation of similar SID programs associated with various transport category airplanes (including the Lockheed Model L–188 series, McDonnell Douglas Model DC–9 series, and McDonnell Douglas Model DC–10 series). Paragraph (a) of the final rule has been revised to extend the compliance time to 12 months.

One commenter requests the deletion of ''Revision A'' from the reference to ''Lockheed Drawing 1647194'' in paragraph (a)(5) of the proposal. The commenter states that this change would allow operators to discard Revision A after subsequent revisions of the drawings have been issued by Lockheed.

The FAA concurs. The purpose of paragraph (a)(5) of the final rule is to point out where, specifically, in the Lockheed Document, an operator may find non-destructive inspection techniques that are acceptable methods for accomplishing the inspections required by this AD. Since paragraph (a)(5) of the final rule references Appendix VI of the Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' the FAA finds that it is unnecessary to reference Lockheed Drawing 1647194. Therefore, the parenthetical reference to ''Revision A of Lockheed Drawing 1647194'' has been deleted from paragraph (a)(5) of the final rule.

One commenter requests a revision to proposed paragraph (b) to permit approval of repairs by manufacturer's Designated Engineering Representatives (DER) or organizations that hold a Special Federal Aviation Regulation (SFAR) 36 authorization.

The FAA does not concur. While it is true that DER's and SFAR 36-authorized organizations are authorized to approve certain repairs of cracks that are found during routine maintenance or opportunity inspections, the FAA considers that cracking detected during any inspection of structurally significant details (SSD), required by this AD (and the SID program), is an indication of an airworthiness concern that is complex in nature. It is crucial that the FAA be aware of all repairs made to SSD's or to their configuration.

Where repair data do not exist, it is essential that the FAA have feedback as to the type of repairs being made. Given that new relevant issues might possibly be revealed during this process, it is imperative that the FAA have such feedback. Only by reviewing repair approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. The FAA has determined that standardization and continuity of repair approvals can best be maintained by having one single point of approval for all repairs of cracks in SSD's identified during SID inspections required by this AD. Since the Manager of the Atlanta Aircraft Certification Office (ACO) is accountable for the primary oversight for the actions regarding this AD, it is appropriate that he be this single point of approval. His involvement, therefore, is warranted in the development and approval of repairs.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane

has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 186 Lockheed Model L–1011–385–1 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry and 5 U.S. operators will be affected by this AD.

Incorporation of the SID into an operator's maintenance program will take approximately 550 work hours, and the average labor rate is $60 per work hour. Based on these figures, the total cost impact to incorporate the SID into an operator's maintenance program is estimated to be $165,000, or $33,000 per operator.

Initially, the FAA estimated that it would take 293 work hours to accomplish the 28 inspections specified in the SID, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the AD for the first year was initially estimated to be $1,758,000, or $17,580 per airplane.

However, the FAA has been advised that the terminating modification for the inspections of SSD 53–2–1, which is described in the Lockheed Document, has been accomplished on the entire U.S. fleet of Model L–1011–385–1 series airplanes. Therefore, the inspections associated with SSD 53–2–1, which would have required 48 work hours per airplane to accomplish, will not need to be performed. In light of this, the cost impact for the initial inspections required by this AD is now only $1,470,000, or $14,700 per airplane.

The recurring (inspection) cost impact on the affected operators is estimated to be 52 work hours per airplane at an average labor cost of $60 per work hour. Based on these figures, the annual recurring cost of this AD is estimated to not exceed $312,000 for the affected U.S. fleet, or $3,120 per airplane.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–20–04 Lockheed: Amendment 39–9382. Docket 93–NM–219–AD.

*Applicability:* All Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD.

In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously. To prevent fatigue cracking that could compromise the structural integrity of these airplanes, accomplish the following:

(a) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the structurally significant details (SSD) defined in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994.

(1) The initial inspection for each SSD must be performed within one repeat interval after the effective date of this AD, or prior to the threshold specified in the Lockheed Document for that SSD, whichever occurs later.

(2) A 10 percent deviation from the repetitive interval specified in the Lockheed Document for that SSD is acceptable to allow for planning and scheduling time.

(3) If the Lockheed Document specifies that inspection of any SSD be performed at every ''C'' check, those inspections must be performed at intervals not to exceed 5,000 hours time-in-service or 2,500 flight cycles, whichever occurs earlier.

(4) If the Lockheed Document specifies either the initial inspection or the repetitive inspection intervals for any SSD in terms of flight hours or flight cycles, the inspection shall be performed prior to the earlier of the terms (whichever occurs first on the airplane: either accumulated number of flight hours, or accumulated number of flight cycles).

(5) The non-destructive inspection techniques referenced in Appendix VI of the Lockheed Document provide acceptable methods for accomplishing the inspections required by this AD.

(b) If any cracking is found in any SSD, prior to further flight, repair in accordance with either paragraph (b)(1), (b)(2), or (b)(3) of this AD:

(1) In accordance with the applicable service bulletin referenced in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994; or

(2) In accordance with the Structural Repair Manual; or

(3) In accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) Within 30 days after returning the airplane to service, subsequent to accomplishment of the inspection(s) specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, submit a report of the results (positive or negative) of the inspection(s) to Lockheed in accordance with Section V., Data Reporting System (DRS), of the Lockheed Document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The incorporation of the revision and reporting requirements shall be done in accordance with Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| List of active pages, pages 1–2. | None ..... | None. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 2, 1995.

Issued in Renton, Washington, on September 20, 1995.

Darrell M. Pederson,

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

[FR Doc. 95–23810 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–13–U**

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## 14 CFR Part 97

**[Docket No. 28341; Amdt. No. 1687]**

## 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.

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 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 Aviation 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 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 September 22, 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 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701, 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, 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 |
|---|---|---|---|---|---|
| 08/24/95 | VT | Springfield | Springfield/Hartness State. | 5/4462 | NDB OR GPS–A AMDT 5... |
| 08/24/95 | VT | Springfield | Springfield/Hartness State. | 5/4463 | LOC–A AMDT 4... |
| 08/29/95 | TX | Dumas | Moore County | 5/4779 | VOR/DME OR GPS–A AMDT 5... |
| 08/31/95 | MI | Oscoda | Oscoda-Wurtsmith | 5/4650 | VOR OR GPS RWY 6 ORIG-A... |
| 08/31/95 | MI | Oscada | Oscoda-Wurtsmith | 5/4651 | ILS/DME RWY 24 ORIG... |
| 08/31/95 | NV | Reno | Tahoe Intl | 5/4647 | ILS RWY 16R AMDT 9... |
| 08/31/95 | NV | Reno | Tahoe Intl | 5/4648 | LOC–2 RWY 16R AMDT 5... |
| 09/06/95 | NC | Chapel Hill | Horace Williams | 5/4822 | VOR/DME OR GPS RWY 27, ORIG-A... |
| 09/07/95 | PA | Pittsburgh | Pittsburgh Intl | 5/4837 | ILS RWY 10R AMDT 6... |
| 09/07/95 | VA | Hot Springs | Ingalls Field | 5/4835 | ILS RWY 24 AMDT 1... |
| 09/11/95 | IA | Charles City | Charles City Muni | 5/4931 | LOC RWY 12, ORIG-B... |
| 09/11/95 | IA | Charles City | Charles City Muni | 5/4932 | NDB OR GPS RWY 12, ORIG-B... |
| 09/11/95 | OH | Wilmington | Airborne Airpark | 5/4951 | NDB RWY 4L AMDT 2B... |
| 09/11/95 | OH | Wilmington | Airborne Airpark | 5/4952 | VOR OR GPS RWY 4 AMDT 5A... |
| 09/11/95 | OH | Wilmington | Airborne Airpark | 5/4953 | VOR/DME OR GPS RWY 22 AMDT 4... |
| 09/11/95 | OH | Wilmington | Airborne Airpark | 5/4954 | ILS RWY 22 AMDT 3... |
| 09/11/95 | OH | Wilmington | Airborne Airpark | 5/4955 | ILS RWY 4 AMDT 2... |
| 09/11/95 | TN | Fayetteville | Fayetteville Muni | 5/4947 | NDB OR GPS RWY 19, AMDT 3A... |
| 09/11/95 | TN | Fayetteville | Fayetteville Muni | 5/4948 | SDF RWY 19, AMDT 2A... |
| 09/11/95 | TN | Fayetteville | Fayetteville Muni | 5/4949 | VOR/DME OR GPS RWY 1, ORIG-A... |
| 09/14/95 | MI | Harbor Springs | Harbor Springs | 5/5011 | VOR OR GPS–A AMDT 1... |
| 09/14/95 | MI | Mackinac Island | Mackinac Island | 5/5012 | VOR/DME OR GPS–A AMDT 8... |
| 09/15/95 | OH | Wilmington | Airborne Airpark | 5/5045 | NDB RWY 22, AMDT 7... |
| 09/15/95 | OH | Wilmington | Airborne Airpark | 5/5046 | VOR RWY 22, AMDT 4... |
| 09/19/95 | FL | Sarasota-Bradenton | Bradenton Intl | 5/5115 | ILS RWY 32, AMDT 4... |

EFFECTIVE UPON PUBLICATION—Continued

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 09/19/95 | NC | Hickory | Hickory Regional | 5/5139 | NDB OR GPS RWY 24, AMDT 4A... |
| 09/19/95 | OR | McMinnville | McMinnville Muni | 5/5125 | ILS RWY 22, AMDT 3... |
| 09/20/95 | TX | Houston | Houston Gulf | 5/5154 | VOR OR GPS RWY 13 AMDT 2... |
| 09/20/95 | TX | Houston | Houston Gulf | 5/5155 | VOR OR GPS RWY 31 AMDT 1... |
| 09/20/95 | WI | Shell Lake | Shell Lake Muni | 5/5151 | NDB RWY 32 ORIG... |

[FR Doc. 95–24549 Filed 10–2–95; 8:45 am]
BILLING CODE 4910–13–M

## 14 CFR Part 97

**[Docket No. 28340; Amdt. No. 1686]**

## 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, the 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 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 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 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'' and 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 September 22, 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 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701, 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, 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 October 12, 1995*

Boston, MA, General Edward Lawrence Logan Intl, LOC 2 RWY 4R, Orig, CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 4R, Amdt 9
Worcester, MA, Worcester Muni, VOR/DME RWY 33, Orig
Worcester, MA, Worcester Muni, LOC RWY 29, Amdt 2, CANCELLED
Worcester, MA, Worcester Muni, NDB OR GPS RWY 11, Amdt 20
Worcester, MA, Worcester Muni, NDB OR GPS RWY 29, Amdt 12
Worcester, MA, Worcester Muni, ILS RWY 11, Amdt 21
Worcester, MA, Worcester Muni, ILS RWY 29, Orig
Charleston, SC, Charleston Executive, GPS RWY 9, Orig
Selmer, TN, Robert Sibley, VOR/DME–A, Orig

*. . . Effective November 9, 1995*

Fort Lauderdale, FL, Fort Lauderdale Executive, VOR/DME RNAV RWY 8, Amdt 3A, CANCELLED
Fort Lauderdale, FL, Fort Lauderdale Executive, VOR/DME RNAV or GPS RWY 8, Orig
Leesburg, FL, Leesburg Muni, NDB RWY 31, Orig
Miami, FL, Kendall-Tamiami Executive, NDB or GPS RWY 9R, Amdt 1
Miami, FL, Kendall-Tamiami Executive, ILS RWY 9R, Amdt 8
Miami, FL, Miami Intl, VOR or GPS RWY 12, Amdt 29, CANCELLED
Miami, FL, Miami Intl, VOR or GPS RWY 30, Amdt 8, CANCELLED
Miami, FL, Miami Intl, NDB RWY 9L, Amdt 1A, CANCELLED
Miami, FL, Miami Intl, NDB RWY 27R, Orig-A, CANCELLED
Miami, FL, Miami Intl, ILS RWY 9L, Amdt 28
Miami, FL, Miami Intl, ILS RWY 9R, Amdt 8
Miami, FL, Miami Intl, ILS RWY 12, Amdt 3
Miami, FL, Miami Intl, VOR/DME or GPS RWY 9L, Amdt 10, CANCELLED
Pompano Beach, FL, Pompano Beach Airpark, VOR RWY 14, Amdt 8A, CANCELLED
Ames, IA, Ames Muni, VOR OR GPS RWY 31, Amdt 9
Ames, IA, Ames Muni, LOC RWY 1, Amdt 1
Ames, IA, Ames Muni, NDB OR GPS RWY 1, Amdt 1
Ames, IA, Ames Muni, NDB OR GPS RWY 13, Amdt 4
Ames, IA, Ames Muni, NDB RWY 31, Amdt 10
Grinnell, IA, Grinnell Regional, NDB OR GPS RWY 13, Amdt 1
Grinnell, IA, Grinnell Regional, NDB RWY 31, Amdt 1
Grinnell, IA, Grinnell Regional, VOR/DME OR GPS RWY 31, Amdt 2
Knoxville, IA, Knoxville Muni, NDB OR GPS RWY 15, Amdt 6
Knoxville, IA, Knoxville Muni, NDB OR GPS RWY 33, Amdt 5
Marshalltown, IA, Marshalltown Muni, GPS RWY 12, Orig
Perry, IA, Perry Muni, NDB OR GPS RWY 13, Amdt 2
Perry, IA, Perry Muni, NDB OR GPS RWY 31, Amdt 5
Clay Center, KS, Clay Center Muni, GPS RWY 17, Orig
Frenchville, ME, Northern Aroostook Regional, NDB or GPS RWY 32, Amdt 5
Cut Bank, MT, Cut Bank Muni, GPS RWY 31, Orig
Reno, NV, Reno/Stead, NDB or GPS–F, Orig, CANCELLED
Reno, NV, Reno/Tahoe Intl, NDB or GPS RWY 16R, Amdt 5, CANCELLED
Concord, NC, Concord Regional, ILS RWY 20, Orig
Chamberlin, SD, Chamberlin Muni, GPS RWY 31, Orig
Breckenridge, TX, Stephens County, GPS RWY 35, Orig
Marshall, TX, Harrison County, GPS RWY 33, Orig.

Note: Sandpoint, ID, Dave Wall Field, NDB/DME–C, Orig. and LOC/DME–A, Orig, Published in TL95–18, EFFECTIVE 12 Oct 95, are rescinded.

Note: Spokane, WA, Felts Field, GPS–A, Orig, Published in TL95–19, EFFECTIVE 12 Oct 95, is rescinded.

[FR Doc. 95–24548 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Sterile Powder For Injection

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. The supplemental NADA provides for veterinary prescription use of a reconstituted ceftiofur sterile powder for injection for the treatment of acute bovine interdigital necrobacillosis (foot rot, pododermatitis) in cattle.

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

**FOR FURTHER INFORMATION CONTACT:** Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

**SUPPLEMENTARY INFORMATION:** The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001, filed a supplemental NADA 140–338, which provides for veterinary prescription use of Naxcel® (ceftiofur sodium) sterile powder for intramuscular use in cattle for the treatment of acute bovine interdigital necrobacillosis (foot rot, pododermatitis) associated with *Fusobacterium necrophorum* and *Bacteroides melaninogenicus*. The reconstituted drug contains the equivalent of 50 milligrams (mg) of ceftiofur per milliliter used at 0.5 to 1.0 mg/pound of body weight once daily for up to 5 days. The supplemental NADA is approved as of August 24, 1995, and the regulations are amended in 21 CFR 522.313(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for a 3-year marketing exclusivity beginning August 24, 1995, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant. The exclusivity applies only to the new indication which is the subject of this supplement.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.313 is amended by adding a sentence to the end of paragraph (d)(1)(ii) to read as follows:

**§ 522.313 Ceftiofur sterile powder for injection.**

* * * * *

(d) * * *

(1) * * *

(ii) * * * Also, for the treatment of acute bovine interdigitial necrobacillosis (foot rot, pododermatitis) associated with *Fusobacterium necrophorum* and *Bacteroides melaninogenicus*.

* * * * *

Dated: September 25, 1995.

Stephen F. Sundlof,

*Director, Center for Veterinary Medicine.*

[FR Doc. 95–24593 Filed 10–2–95; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF STATE

## 22 CFR Part 92

**[Public Notice 2265 ]**

## Bureau of Consular Affairs; Notarial and Related Services

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consular Affairs is amending its notarial regulations to authorize certain U.S. citizen employees of the Department of State who are not diplomatic or consular officers, but who have been designated by the Deputy Assistant Secretary for Overseas Citizen Services, to perform notarial services overseas.

**EFFECTIVE DATE:** This rule takes effect October 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Carmen A. DiPlacido, or Michael Meszaros, Overseas Citizens Services, Department of State, 202–647–3666 or 202–647–4994.

**SUPPLEMENTARY INFORMATION:** This rule implements section 127(b) of the Foreign Relations Authorization Act, Fiscal Years 1994–1995, Pub. L. 103–236, April 30, 1994. Section 127(b) authorizes the Secretary of State to promulgate regulations providing for the designation of U.S. citizen employees of the Department of State to perform in foreign countries notarial services authorized to be performed by consular officers. The Department's new authority under section 127(b) will allow it to supplement the staff available to perform notarial services at posts abroad with designated U.S. citizen State Department employees who are not consular officers, thereby providing prompt, efficient services to the public and freeing consular officers to focus more of their efforts on other demands on our overseas posts. Consular and other diplomatic officers will still perform notarial functions as needed.

The Secretary's authority providing for the designation of the officers was delegated to the Assistant Secretary for Consular Affairs on September 20, 1994. The final rule will further delegate that authority to the Deputy Assistant Secretary for Overseas Citizens Services.

The rule was published as a proposed rule on December 16, 1994, with public comments due by January 17, 1995 (59 FR 64,881). In addition to publication in the Federal Register, the Department of State mailed copies of the proposed regulations to appropriate notarial officials in the states and territories. Copies were also mailed to private organizations which may have had an interest in the proposed regulations, such as the National Notary Association and the International Law section of the American Bar Association.

Discussion of Comments and Changes

The Department of State received two public comments on the proposed regulations. The National Notary Association pointed out an issue concerning the proposed § 92.4's requirement that all notarizing officers ''perform any notarial act which any notary public is required or authorized by law to perform within the United States.'' The Association suggested that this provision:

> May prove problematic, since Notaries in Maine, Florida and South Carolina have authority to perform marriages, and, in Louisiana, they have essentially the same duties and authority as attorneys. Further, in some states Notaries have certain peculiar duties which the State Department's notarizing officers may not be prepared to perform, including protests and the certification of an event or act.''

The Association suggested that § 92.4 be further amended to specify exactly the notarial acts that notarizing officers may perform: ''* * * to administer, take or execute oaths, affirmations, acknowledgments, proofs, affidavits and depositions, except as limited by § 92.1.''

The Department thanks the National Notary Association for taking the time and effort to review our proposed regulations. The language it is concerned about in fact predates the proposed amendments, however, and closely tracks the actual wording of 22 U.S.C. 4215 and 22 U.S.C. 4221, which are the statutes that authorize employees of the State Department to perform notarial acts. Moreover, the Department has always understood these two authorizing statutes to use the term ''notarial act'' in the traditional sense of the word. Thus the Department believes that the statutes encompass notarial acts as specified by statute in a

majority of the States, but not all the acts that a notary may perform in every state. In some states (under common law) the duties of the notary public were expanded over time, so that notaries basically performed the functions of a justice of the peace. A minority of these states (Maine, Florida and South Carolina, according to the Association) then codified some of these functions, one of them being the celebration of a marriage. The Department understands, however, that in effect these few States have authorized notaries to perform acts that are not notarial, at least not in the traditional sense or the sense authorized in the majority of the states or by 22 U.S.C. 4215 and 4221. Thus, the Department does not believe that 22 U.S.C. 4215 and 4221 or its notarial regulations provide a basis to authorize its consular or other notarial officers to perform such extraordinary acts that are more typically associated with Justices of the Peace or attorneys. Support for this view is found in the definition of a notary public in one commonly cited source:

> A notary public is defined as a public, civil, or ministerial officer, and an impartial agent of the state, who in the performance of his duties, exercises a delegation of the state's sovereign power, as in attesting the genuineness of any deeds or writings in order to render them available as evidence of the facts therein contained, and in administering oaths and attesting to the authenticity of signatures.

58 AM. JUR. 2D *Notaries Public* section 1 (1995).

We do agree, however, that a change in the wording of the Department's regulations would be useful to ensure that there is no misunderstanding of the notarial authorities of Department officials. Given our understanding that 22 U.S.C. 4215 and 4221 authorize the performance of oaths, affirmations and other ministerial duties of notaries, not extraordinary acts (such as celebrating a marriage) which are not traditional notarial acts and which are authorized by a minority of the states, we have substituted for the first sentence of Section 92.4(a) the following three sentences:

All notarizing officers are required, when application is made to them within the geographic limits of their consular district, to administer to and take from any person any oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States. The term ''notarial act'' as used herein shall not include the performance of extraordinary acts, such as marriages, that have not been traditionally regarded as notarial, notwithstanding that notary publics may be authorized to perform such acts in some of the states of the United States. If a request is made to perform an act that the notarizing officer believes is not properly regarded as notarial within the meaning of this regulation, the officer shall not perform the act unless expressly authorized by the Department upon its determination that the act is a notarial act within the meaning of 22 U.S.C. 4215 and 4221.

Another comment was received from the Office of Inspection of Notarial Deeds, Tribunal Supremo, Puerto Rico:

> We foresee no difficulties with the implementation of this rule with the exceptions provided. However, [it is] respectfully requested [that the Department] consider in the rule whether the documents which bear the signature of a designated employee in his official capacity similar to a consular officer, require *or not* to be accompanied by a certification stating that the signature of the designated employee is genuine and that the signer has the official capacity to sign the document.

The issue of whether a certification would need to accompany any notarial act performed by a designated State Department employee has been considered. Due to the fact that our designated employees will have the same statutory authority as a consular officer, the Department has concluded that attaching such certificates to notarial acts performed by designated employees will not be necessary. The Department will maintain records of employees designated under these regulations to ensure that their official acts can subsequently be verified if questioned, for example, in litigation.

As noted when this rule was first proposed, the new regulation does not provide for designated U.S. citizen State Department employees to perform authentications, but the Department hopes to be able to extend the rule to encompass authentications in the future. The authentication of documents for use in civil proceedings in the federal courts is currently governed by Rule 44(a)(2) of the Federal Rules of Civil Procedure. It is unclear whether that rule can be read to include authentications performed by non-consular officer U.S. citizen employees designated by the Department to perform notarial services. The Bureau for Consular Affairs plans to initiate consultations with the appropriate judicial officials to clarify the interpretation of Rule 44 and, if necessary, to ask that Rule 44 be amended to encompass all notarial officials under this proposed rule, thereby permitting further amendments to the Department's notarial regulations to include authentications.

Similarly, the regulation does not allow the designated employees to perform notarial services in connection with patents and patent applications. The taking of oaths regarding patent applications is governed by 35 U.S.C. 115, which provides for patent application oaths to be administered by ''diplomatic and consular officers.'' The Department of State is now seeking an amendment to the statute to permit notarial officers to accept patent applications.

Another service which designated employees are unable to perform is the taking of testimony in any criminal action or proceeding pursuant to a commission issued by a court in the United States. Such testimony is governed by 18 U.S.C. 3492, which authorizes consular officers to receive commissions to take testimony. Again, the Department is now seeking an amendment to the statute to permit notarial officers to permit notarizing officers to receive commissions to authenticate documents and take testimony.

The acceptability of notarials performed by designated U.S. citizen State Department employees for State law purposes is of course governed by the laws of the various states. The Department hopes that any State laws that do not allow acceptance of such notarials will be amended as necessary to achieve this result, and will be inviting consultations to this end.

The Department believes that, with these qualifications, notarials performed by designated U.S. citizen State Department employees will be acceptable for all purposes, and particularly for all Federal law purposes. The Bureau of Consular Affairs will be consulting with other interested federal agencies to ensure this result to the extent possible consistent with current statutory authorities.

This regulation is not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It will not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866 but is consistent therewith and is being shared with potentially interested federal agencies to ensure that they are aware of the changes it will entail in consular operations.

List of Subjects in 22 CFR Part 92

Notarial and Related Services.

For the reasons set out in the preamble, 22 CFR part 92 is amended as follows:

## PART 92—NOTARIAL AND RELATED SERVICES

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

Authority: 22 U.S.C. 2658, unless otherwise noted.

### § 92.1 [Amended]

2. Section 92.1(d) is added to read as follows:

* * * * *

(d) For purposes of this part, except §§ 92.36 through 92.42 relating to the authentication of documents, the term ''notarizing officer'' includes consular officers, officers of the Foreign Service who are secretaries of embassy or legation under Section 24 of the Act of August 18, 1856, 11 Stat. 61, as amended (22 U.S.C. 4221), and such U.S. citizen Department of State employees as the Deputy Assistant Secretary of State for Overseas Citizens Services may designate for the purpose of performing notarial acts overseas pursuant to section 127(b) of the Foreign Relations Authorization Act, Fiscal Years 1994–1995, Pub. L. 103–236, April 30, 1994 (''designated employees''). The authority of designated employees to perform notarial services shall not include the authority to perform authentications, to notarize patent applications, or take testimony in a criminal action or proceeding pursuant to a commission issued by a court in the United States, but shall otherwise encompass all notarial acts, including but not limited to administering or taking oaths, affirmations, affidavits or depositions.

The notarial authority of a designated employee shall expire upon termination of the employee's assignment to such duty and may also be terminated at any time by the Deputy Assistant Secretary for Overseas Citizen Services.

3. Section 92.2 is revised to read as follows:

### § 92.2 Description of overseas notarial functions of the Department of State, record of acts.

The overseas notarial function of notarizing officers of the Department of State is similar to the function of a notary public in the United States. See § 22.5(b) of this chapter concerning the giving of receipts for fees collected and the maintenance of a register serving the same purposes as the record which notaries are usually expected or required to keep of their official acts.

4. Section 92.4 is amended by revising the heading and paragraphs (a), (b) and (c) to read as follows:

### § 92.4 Authority of notarizing officers of the Department of State under Federal law.

(a) All notarizing officers are required, when application is made to them within the geographic limits of their consular district, to administer to and take from any person any oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States. The term ''notarial act'' as used herein shall not include the performance of extraordinary acts, such as marriages, that have not been traditionally regarded as notarial, notwithstanding that notary publics may be authorized to perform such acts in some of the states of the United States. If a request is made to perform an act that the notarizing officer believes is not properly regarded as notarial within the meaning of this regulation, the officer shall not perform the act unless expressly authorized by the Department upon its determination that the act is a notarial act within the meaning of 22 U.S.C. 4215 and 4221. The language ''within the limits of the consulate'' is construed to mean within the geographic limits of a consular district. With respect to notarial acts performed by notarizing officers away from their office, see § 92.7. Notarial acts shall be performed only if their performance is authorized by treaty provisions or is permitted by the laws or authorities of the country wherein the notarizing officer is stationed.

(b) These acts may be performed for any person regardless of nationality so long as the document in connection with which the notarial service is required is for use within the jurisdiction of the Federal Government of the United States or within the jurisdiction of one of the States or Territories of the United States. (However, see also § 92.6.) Within the Federal jurisdiction of the United States, these acts, when certified under the hand and seal of office of the notarizing officer are valid and of like force and effect as if performed by any duly authorized and competent person within the United States. Documents bearing the seal and signature of a secretary of embassy or legation, consular officer (including consul general, vice consul or consular agent) are admissible in evidence within the Federal jurisdiction without proof of any such seal or signature being genuine or of the official character of the notarizing officer.

(c) Every notarizing officer may perform notarial acts for use in countries occupied by the United States or under its administrative jurisdiction, provided the officer has reason to believe that the notarial act will be recognized in the country where it is intended to be used. These acts may be performed for United States citizens and for nationals of the occupied or administered countries, who reside outside such countries, except in areas where another government is protecting the interests of the occupied or administered country.

* * * * *

5. Section 92.5 is revised to read as follows:

### § 92.5 Acceptability of notarial acts under State or territorial law.

The acceptability with the jurisdiction of a State or Territory of the United States of a certificate of a notarial act performed by a notarizing officer depends upon the laws of the State or Territory.

6. In § 92.6, introductory text and paragraph (b) are revised to read as follows:

### § 92.6 Authority of notarizing officers under international practice.

Although such services are not mandatory, notarizing officers may, as a courtesy, perform notarial acts for use in countries with which the United States has formal diplomatic and consular relations. Generally the applicant for such service will be a United States citizen or a national of the country in which the notarized document will be used. The notarizing officer's compliance with a request for a notarial service of this type should be based on the reasonableness of the request and the absence of any apparent irregularity. When a notarizing officer finds it advisable to do so, the officer may question the applicant to such extent as may be necessary to be assured of the reasonableness of the request and the absence of irregularity.

* * * * *

(b) That the notarial service is legally necessary and cannot be obtained otherwise than through a United States notarizing officer without loss or serious inconvenience to the applicant; and

* * * * *

7. Section 92.7 is amended by revising the heading and paragraph (b) to read as follows:

### § 92.7 Responsibility of notarizing officers of the Department of State.

* * * * *

(b) As indicated in §§ 92.4, 92.5, and 92.6, the authority of secretaries of embassy or legation as well as consular officers to perform notarial acts is generally recognized. However, the function is essentially consular, and notarial powers are in practice exercised by diplomatic officers only in the absence of a consular officer or U.S. citizen State Department employee designated to perform notarial functions as provided in § 92.1(d). Performance of notarial acts by an officer assigned in dual diplomatic and consular capacity shall be performed in his/her consular capacity, except in special circumstances.

8. Section 92.31 is amended by revising the third sentence of paragraph (a) to read as follows:

**§ 92.31 Taking an acknowledgment.**

(a) * * * Therefore, notarizing officers and consular agents who are called upon to perform this notarial act should consult the applicable State or territorial law to ascertain whether certificates of acknowledgment will be acceptable.

* * * * *

9. Section 92.51 is revised to read as follows:

**§ 92.51 Methods of taking depositions in foreign countries.**

Rule 28(b) of the Rules of Civil Procedure for the District Courts of the United States provides that depositions may be taken in foreign countries by any of the following four methods:

(a) Pursuant to any applicable treaty or convention, or

(b) Pursuant to a letter of request (whether or not captioned a letter rogatory), or

(c) On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States. Notarizing officials as defined by 22 CFR 92.1 are so authorized by the law of the United States, or

(d) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony.

10. Section 92.52 is revised to read as follows:

**§ 92.52 ''Deposition on notice'' defined.**

A ''deposition on notice'' is a deposition taken before a competent official after reasonable notice has been given in writing by the party or attorney proposing to take such deposition to the opposing party or attorney of record. Notarizing officers, as defined by 22 CFR 92.1, are competent officials for taking depositions on notice in foreign countries (see § 92.51). This method of taking a deposition does not necessarily involve the issuance of a commission or other court order.

11. Section 92.55 is revised to read as follows:

**§ 92.55 Consular authority and responsibility for taking depositions.**

(a) *Requests to take depositions or designations to execute commissions to take depositions.* Any United States notarizing officer may be requested to take a deposition on notice, or designated to execute a commission to take depositions. A commission or notice should, if possible, identify the officer who is to take depositions by his official title only in the following manner: ''Any notarizing officer of the United States of America at (name of locality)''. The notarizing officer responsible for the performance of notarial acts at a post should act on a request to take a deposition on notice, or should execute the commission, when the documents are drawn in this manner, provided local law does not preclude such action. However, when the officer (or officers) is designated by name as well as by title, only the officer (or officers) so designated may take the depositions. In either instance, the officer must be a disinterested party. Rule 28(c) of the Rules of Civil Procedure for the district courts of the United States prohibits the taking of a deposition before a person who is a relative, employee, attorney or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action.

(b) *Authority in Federal law.* The authority for the taking of depositions, charging the appropriate fees, and imposing the penalty for giving false evidence is generally set forth in 22 U.S.C. 4215 and 4221. The taking of depositions for federal courts of the United States is further governed by the Federal Rules of Civil Procedure. For the provisions of law which govern particularly the taking of depositions to prove the genuineness of foreign documents which it is desired to introduce in evidence in any criminal action or proceeding is a United States federal court, see 18 U.S.C. 3491 through 3496.

(c) *Procedure where laws of the foreign country do not permit the taking of depositions.* In countries where the right to take depositions is not secured by treaty, notarizing officers may take depositions only if the laws or authorities of the national government will permit them to do so. Notarizing officers in countries where the taking of depositions is not permitted who receive notices or commissions for taking depositions should return the documents to the parties from whom they are received explaining why they are returning them, and indicating what other method or methods may be available for obtaining the depositions, whether by letters rogatory or otherwise.

12. Section 92.66 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 92.66 Depositions taken before foreign officials or other persons in a foreign country.**

(a) *Customary practice.* Under Federal law (Rule 28(b), Rules of Civil Procedure for the District Courts of the United States) and under the laws of some of the States, a commission to take depositions can be issued to a foreign official or to a private person in a foreign country. However, this method is rarely used; commissions are generally issued to U.S. notarizing officers. In those countries where U.S. notarizing officers are not permitted to take testimony (see § 92.55(c)) and where depositions must be taken before a foreign authority, letters rogatory are usually issued to a foreign court.

* * * * *

(d) *Transmissions of commissions to foreign officials or other persons.* A commission to take depositions which is addressed to an official or person in a foreign country other than a United States notarizing officer may be sent directly to the person designated. However, if such a commission is sent to the United States diplomatic mission in the country where the depositions are intended to be taken, it should be forwarded to the Foreign Office for transmission to the person appointed in the commission. If sent to a United States consular office, the commission may be forwarded by that office directly to the person designated, or, if the notarial officer deems it more advisable to do so, he may send the commission to the United States diplomatic mission for transmission through the medium of the foreign office.

**§§ 92.3, 92.8, 92.9(a) and 92.9(b), 92.10, 92.11(a) and 92.11(b), 92.12, 92.15, 92.17, 92.23, 92.24, 92.27(a) and 92.27(b), 92.29, 92.31, 92.32(b), 92.33, 92.35, 92.56, 92.58, 92.57, 92.60, 92.61, 92.62, and 92.64(b) [Amended]**

12. In 22 CFR Part 92 remove the words ''consular officer,'' ''consular officers'' or ''consular officer's'' and add, in their place, as appropriate, the words ''notarizing officer'', ''notarizing

officers'' or ''notarizing officer's'' in the following places:

(a) Section 92.3;
(b) Section 92.8;
(c) Section 92.9(a) and 92.9(b);
(d) Section 92.10;
(e) Section 92.11(a) and 92.11(b);
(f) Section 92.12;
(g) Section 92.15;
(h) Section 92.17;
(i) Section 92.23;
(j) Section 92.24;
(k) Section 92.27(a) and 92.27(b);
(l) Section 92.29;
(m) Section 92.31;
(n) Section 92.32(b);
(o) Section 92.33;
(p) Section 92.35;
(q) Section 92.56, introductory text;
(r) Section 92.57;
(s) Section 92.59, concluding text;
(t) Section 92.60';
(u) Section 92.61;
(v) Section 92.62;
(w) Section 92.63, concluding text;
(x) Section 92.64(b)

Dated: August 29, 1995.

Mary A. Ryan,

*Assistant Secretary for Consular Affairs.*

[FR Doc. 95–24588 Filed 10–2–95; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 164

**RIN 1076–AC77**

## Sale of Lumber and Other Forest Products Produced by Indian Enterprises From the Forests on Indian Reservations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is deleting regulations which govern the terms and conditions under which forest products produced by Indian tribal forest enterprises from the forests of Indian Reservations may be sold. The BIA is deleting these regulations because the ''General Forest Regulations,'' prescribe similar terms and conditions for such sales of Indian forest products in the section, ''Indian Tribal Forest Enterprise Operations.'' Therefore, this deletion is necessary to eliminate redundancy and potential confusion in forestry program regulations.

**EFFECTIVE DATE:** November 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Stires, Billings Area Office, Bureau of Indian Affairs, Branch of Forestry at (406) 657–6358.

**SUPPLEMENTARY INFORMATION:** This action, deleting 25 CFR part 164, results from the BIA's need to eliminate the redundancy and potential confusion arising from having two regulations governing the same operations. The BIA recognizes that provisions in § 163.13 of the revision of 25 CFR part 163, ''General Forest Regulations,'' are adequate to govern the sale of Indian forest products and, as a result, that 25 CFR part 164 is no longer needed.

No comments were received during the 60 day comment period following the publication of the proposed rule in the Federal Register.

The Department of the Interior has determined that this rule is not a significant regulation action under Executive Order 12866, and therefore will not be reviewed by the Office of Management and Budget. This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the sale of lumber and forest products produced by Indian enterprises will be conducted as in the past.

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

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

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The deletion of 25 CFR part 164, ''Sale of Lumber and Other Forest Products Produced by Indian Enterprises from Forests on Indian Reservations,'' will not create information collection or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, BIA, Branch of Forestry, Billings, Montana.

List of Subjects in 25 CFR Part 164

Forests and forest products; Indian lands.

For the reasons set forth in the preamble, and under the authority of Public Law 97–257, Title I, Section 100 (September 30, 1982, Stat. 839), Part 164 of Chapter I, of Title 25 of the Code of Federal Regulations is removed.

Dated: July 17, 1995.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 95–24478 Filed 10–2–95; 8:45 am]

BILLING CODE 4310–02–P

## 25 CFR Part 165

**RIN 1076–AC75**

## Sale of Forest Products, Red Lake Indian Reservation, Minnesota

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is deleting regulations which govern the terms and conditions under which forest products produced by the Red Lake Indian Mills may be sold. The BIA is deleting these regulations because the Red Lake Indian Mills no longer exists and the revision of 25 CFR Part 163, ''General Forest Regulations,'' prescribes the terms and conditions for the sale of forest products produced by other Indian forest product enterprises on the Red Lake Indian Reservation. Therefore, this deletion is necessary to eliminate redundancy and potential confusion in forestry program regulations.

**EFFECTIVE DATE:** November 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Stires, Billings Area Office, Bureau of Indian Affairs, Branch of Forestry, telephone (406) 657–6358.

**SUPPLEMENTARY INFORMATION:** This action, deleting 25 CFR part 165, results from the BIA's need to eliminate the redundancy and potential confusion arising from having an unnecessary regulation for a business entity that no longer exists. In addition, the BIA recognizes that provisions in § 163.13 of the revision of 25 CFR part 163, ''General Forest Regulations,'' are adequate to govern the sale of Indian forest products by Indian forest enterprises on the Red Lake Indian Reservation and, as a result, that 25 CFR part 165 is no longer needed.

No comments were received during the 60 day comment period following the publication of the proposed rule in the Federal Register.

The Department of the Interior has determined that this rule is not a significant regulation action under Executive Order 12866, and therefore

will not be reviewed by the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because the entity that was regulated no longer exists.

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778. In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The deletion of 25 CFR part 165, ''Sale of Forest Products, Red Lake Indian Reservation, Minnesota,'' will not create information collection or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, BIA, Branch of Forestry, Billings, Montana.

List of Subjects in 25 CFR Part 165

Forests and forest products; Indian lands.

For the reasons set forth in the preamble, and under the authority of Public Law 97–257, Title I, Section 100 (September 30, 1982, Stat. 839), Part 165 of Chapter I, Title 25 of the Code of Federal Regulations is removed.

Dated: July 17, 1995.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 95–24479 Filed 10–2–95; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 8621]**

**RIN 1545–AT21**

## Authority of the Secretary of Agriculture To Share Employer Identification Numbers Collected From Retail Food Stores and Wholesale Food Concerns

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the authority of the Secretary of Agriculture to share employer identification numbers collected from retail food stores and wholesale food concerns with other agencies or instrumentalities of the United States. These regulations reflect changes to the law made by section 316(b) of the Social Security Independence and Program Improvements Act of 1994 and affect retail food stores and wholesale food concerns.

**DATES:** These regulations are effective October 3, 1995.

For dates of applicability, see the ''Effective Dates'' section under the ''**SUPPLEMENTARY INFORMATION**'' portion of the preamble and the effective date provisions of the new or revised regulations.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Basso (202) 622–6232 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 6109(f) of the Internal Revenue Code (Code) was amended by section 316(b) of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103–296. The amendments to section 6109(f) were effective on August 15, 1994.

On May 10, 1995, a notice of proposed rulemaking (IA–007–95) under section 6109(f) of the Code relating to the authority of the Secretary of Agriculture to share employer identification numbers collected from retail food stores and wholesale food concerns with other agencies or instrumentalities of the United States was published in the Federal Register (60 FR 24811). Although written comments and requests for a public hearing were solicited, no written or oral comments were received and no public hearing was requested or held. Accordingly, the proposed regulations under section 6109(f) are adopted by this Treasury decision without any revisions.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

### Effective Dates

These regulations are effective on February 1, 1992, except that any provisions relating to the sharing of information by the Secretary of Agriculture with any other agency or instrumentality of the United States are effective on August 15, 1994.

### Drafting Information

The principal author of these regulations is Robert J. Basso, Office of the Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6109–2 is amended by revising paragraphs (c) through (g) and adding paragraph (h) to read as follows:

**§ 301.6109–2 Authority of the Secretary of Agriculture to collect employer identification numbers for purposes of the Food Stamp Act of 1977.**

* * * * *

(c) *Sharing of information*—(1) *Sharing permitted with certain United States agencies and instrumentalities.* The Secretary of Agriculture may share the information contained in the list described in paragraph (b) of this section with any other agency or instrumentality of the United States that otherwise has access to employer identification numbers, but only to the extent the Secretary of Agriculture determines sharing such information will assist in verifying and matching that information against information maintained by the other agency or instrumentality.

(2) *Restrictions on the use of shared information.* The information shared by the Secretary of Agriculture pursuant to this section may be used by any other agency or instrumentality of the United States only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of those laws.

(d) *Safeguards*—(1) *Restrictions on access to employer identification numbers by individuals*—(i) *Numbers maintained by the Secretary of Agriculture.* The individuals who are permitted access to employer identification numbers obtained pursuant to paragraph (a) of this section and maintained by the Secretary of Agriculture are officers and employees of the United States whose duties or responsibilities require access to such employer identification numbers for the purpose of effective administration or enforcement of the Food Stamp Act of 1977 or for the purpose of sharing the information in accordance with paragraph (c) of this section.

(ii) *Numbers maintained by any other agency or instrumentality.* The individuals who are permitted access to employer identification numbers obtained pursuant to paragraph (c) of this section and maintained by any agency or instrumentality of the United States other than the Department of Agriculture are officers and employees of the United States whose duties or responsibilities require access to such employer identification numbers for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of those laws.

(2) *Other safeguards.* The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in paragraph (c) of this section, must provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the employer identification numbers. The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in paragraph (c) of this section, may also provide for any additional safeguards to protect the confidentiality of employer identification numbers, provided these safeguards are consistent with safeguards determined by the Secretary of the Treasury to be necessary or appropriate.

(e) *Confidentiality and disclosure of employer identification numbers.* Employer identification numbers obtained pursuant to paragraph (a) or (c) of this section are confidential. No officer or employee of the United States who has or had access to any such employer identification number may disclose that number in any manner to an individual not described in paragraph (d) of this section. For purposes of this paragraph (e), *officer or employee* includes a former officer or employee.

(f) *Sanctions*—(1) *Unauthorized, willful disclosure of employer identification numbers.* Sections 7213(a)(1), (2), and (3) apply with respect to the unauthorized, willful disclosure to any person of employer identification numbers that are maintained pursuant to this section by the Secretary of Agriculture, or any other agency or instrumentality with which information is shared pursuant to paragraph (c) of this section, in the same manner and to the same extent as sections 7213(a)(1), (2), and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections.

(2) *Willful solicitation of employer identification numbers*1. Section 7213(a)(4) applies with respect to the willful offer of any item of material value in exchange for any employer identification number maintained pursuant to this section by the Secretary of Agriculture, or any other agency or instrumentality with which information is shared pursuant to paragraph (c) of this section, in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(g) *Delegation.* All references in this section to the Secretary of Agriculture are references to the Secretary of Agriculture or his or her delegate.

(h) *Effective date.* Except as provided in the following sentence, this section is effective on February 1, 1992. Any provisions relating to the sharing of information by the Secretary of Agriculture with any other agency or instrumentality of the United States are effective on August 15, 1994.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

Approved: September 7, 1995.

Cynthia G. Beerbower,

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 95–24467 Filed 10–2–95; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF LABOR

## Employment Standards Administration, Wage and Hour Division

## 29 CFR Part 4

## Service Contract Act; Labor Standards for Federal Service Contracts

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This document revises 29 CFR part 4 to delete the requirement in § 4.7 of 29 CFR part 4 that any service contract of the Federal Government in an amount less then $2,500 that is subject to the McNamara-O'Hara Service Contract Act of 1965, as amended (SCA), must contain a clause specifying that the contractor or any subcontractor shall pay the minimum wage under the Fair Labor Standards Act (FLSA) to employees engaged in the performance of the contract. This revision is in response to the new ''micro purchase'' authority established by § 4301 of the Federal Acquisition Streamlining Act of 1994 (FASA) and facilitates the use of government credit cards for the purchase of supplies and services under $2,500.

**DATES:** This rule is effective October 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:**

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to

the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150. The general Fair Labor Standards Act (FLSA) recordkeeping requirements which are restated in part 4 were approved by the Office of Management and Budget under OMB control number 1215–0017.

II. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, 108 Stat. 3243) was enacted into law on October 13, 1994. Section 4001 of this Act amends the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to establish a ''simplified acquisition threshold'' of $100,000. In addition, § 4301 of FASA amends the Office of Federal Procurement Policy Act to establish a new class of purchases referred to as ''micro purchases,'' and a micro purchase threshold of $2,500. Under this section, among other things, purchases not exceeding $2,500 are not subject to the Small Business Act reservation requirement, Buy American Act, the requirement to secure competitive quotations, and Federal employees making such purchases are not deemed ''procurement officials.'' The new micro purchase authority, based on a recommendation of The National Performance Review (NPR), facilitates the use of credit cards by Federal agencies on small dollar purchases of supplies and services. For such purchases, the credit card procedure becomes both the method of payment and a method of contracting. The contract clause requirement in § 4.7 of 29 CFR part 4 for service contracts under $2,500 complicates implementation of the new micro purchase authority.

Section 2(b)(1) of the Service Contract Act of 1965 (SCA) (41 U.S.C. 351(b)(1)) generally obligates all contractors and subcontractors who are awarded contracts principally for the furnishing of services through the use of service employees, regardless of contract amount, to pay not less than the Federal minimum wage under § 6(a)(1) of the Fair Labor Standards Act (FLSA) to the employees engaged in the performance of such contracts. Unlike § 2(a) of the SCA which requires every service contract in excess of $2,500 to include particular stipulations relating to the Act's prevailing wage and fringe benefit provisions and other labor standard protections, § 2(b) does not statutorily require a ''clause'' to implement the obligation of covered service contractors or subcontractors to pay service employees not less than the minimum wage under § 6(a)(1) of the FLSA. Because the clause mandated by § 2(a) of the SCA for covered contracts in excess of $2,500 advises contractors and subcontractors of the obligation to pay FLSA minimum wages in the absence of a prevailing wage attachment to the contract (see paragraph (d)(1) of § 4.6), a counterpart minimum wage clause was considered appropriate for inclusion in contracts not exceeding $2,500 when SCA's original implementing regulations were being considered, and the requirement has been a part of the regulations since their inception.

The Department published a notice of proposed rulemaking in the Federal Register on June 16, 1995 (60 FR 31660), inviting comments until July 17, 1995, on a proposal to delete the contract clause requirement in § 4.7 of 29 CFR part 4 for service contracts under $2,500. One comment was received on the proposed rule. The International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, argued that the clause in § 4.7 assured minimum wage protections to service workers on small contracts, and that its removal, in the absence of credit card procedures to alert contractors of their minimum wage obligations, would undermine longstanding safeguards for such workers by making them dependent on their employers' familiarity with statutory requirements. While the Department acknowledges the basis of this concern, it continues to believe that the deletion of the requirement for a minimum wage clause in SCA-covered contracts not exceeding $2,500 will not adversely affect labor standards protections afforded service employees engaged in the performance of such contracts. The obligation of contractors and subcontractors to pay at least the minimum wage to any service employee performing on an SCA-covered contract is specifically contained in § 2(b) of the SCA, and is also set forth in § 6(e)(1) of the FLSA. This statutory obligation is defined further in the existing regulations at § 4.2 of 29 CFR part 4. While the clause may enhance employer awareness of minimum wage obligations, its removal as a contractual requirement does not conflict with the SCA's basic statutory framework. Given the lack of express statutory authority for the clause at § 4.7, and balanced against the streamlining objectives of FASA's § 4301, the commenter's contention that removal of the clause requirement disregards the rights of workers does not provide a compelling argument for not going forward as proposed. Accordingly, the proposed removal of the contract clause requirement is adopted as a final rule.

*Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995*

This rule is not considered a ''significant regulatory action'' within the meaning of Executive Order 12866, nor does it require a § 202 statement under the Unfunded Mandates Reform Act of 1995. It will facilitate the handling of Federal agency purchases of $2,500 or less. The change eliminates a contract clause, which impedes the efficiency contemplated by the use of purchase cards on small purchases authorized by the micro-purchase authority under the Federal Acquisition Streamlining Act of 1994. The revision, however, will not eliminate the obligation of contractors and subcontractors to pay employees on such contracts not less than the minimum wage under § 6 of the FLSA.

Because the deletion of the contract clause would not affect contractors' responsibilities, the change is not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Furthermore, deletion of the clause facilitates credit card purchases (thereby resulting in savings in paperwork processing) of services—estimated to be about 12 percent of all credit card purchases. Therefore, no regulatory impact analysis has been prepared.

*Regulatory Flexibility Analysis*

This rule will not have a significant economic impact on a substantial number of small entities. The rule simplifies the handling of small purchases of services and will primarily affect Federal agencies through reductions in burdensome paperwork. While small entities will benefit from less burdensome procurement procedures, the impact is believed to be insignificant because the purchase of

services appropriate for credit card use is relatively small, *i.e.*, the bulk of purchases appropriate for credit card use is supplies. Thus, this rule is not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. A regulatory flexibility analysis is not required.

*Administrative Procedure Act*

This rule will facilitate Federal agency purchases of $2,500 or less under provisions authorized by the micro-purchase authority of the Federal Acquisition Streamlining Act of 1994, effective October 1, 1995. Accordingly, the Agency for good cause finds, pursuant to U.S.C. 553(d)(3), that delay of the effective date of this rule is impracticable and contrary to the public interest.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Accordingly, 29 CFR Part 4 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C., on this 27th day of September, 1995.

Maria Echaveste,

*Administrator, Wage and Hour Division.*

## PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. Authority citation for Part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

### § 4.7 [Removed and Reserved]

2. In Subpart A, § 4.7 is removed and reserved.

[FR Doc. 95–24504 Filed 10–2–95; 8:45 am]

BILLING CODE 4510–27–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–94–149]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Danvers, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the operating rules governing the Beverly-Salem SR1A Bridge at mile 0.0, between Salem and Beverly, Massachusetts, and the Essex County Kernwood Bridge at mile 1.0, between Peabody and Beverly, Massachusetts. Both bridges span the Danvers River. This final rule will permit the bridge owner, the Massachusetts Highway Department (MHD), to reduce the time periods that the bridges are crewed and increase the time periods that the bridges will be on a one-hour advance notice for openings. This action is being taken because there have been historically few requests for bridge openings during the time periods that MHD will not crew the bridge and require a one-hour advance notice for bridge openings. This change to the regulations will relieve the bridge owner of the unnecessary burden of having personnel at the bridge during the time periods that have had few requests for openings.

**EFFECTIVE DATE:** November 2, 1995.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at the First Coast Guard District, Bridge Branch office located inthe Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On January 19, 1995 the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Danvers River, Massachusetts'' in the Federal Register (60 FR 3794). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Beverly-Salem SR1A Bridge, mile 0.0, between Salem and Beverly, Massachusetts, has a vertical clearance of 10′ above mean high water (MHW) and 19′ above mean low water (MLW). The Essex County Kernwood Bridge at mile 1.0, between Peabody and Beverly, Massachusetts, has a vertical clearance of 8′ above MHW and 17′ above MLW.

The MHD has requested authority to reduce the times when the bridges are crewed by drawtenders and to increase the times when the bridges are on one-hour advance notice for openings. This request by MHD seeks relief from the unncessary burden of crewing the bridges during times of infrequent requests for bridge openings.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking. No changes to the proposed rule have been made.

Regulatory Evaluation

This 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 rule to be so minimal that a full Regulatory Evaulation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that this rule will not prevent mariners from passing through the Beverly Salem SR1A Bridge and the Essex County Kernwood Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule 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. Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 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); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.595, paragraphs (a)(4), (b)(1), and (c) are revised and paragraph (d) is added to read as follows:

**§ 117.595 Danvers River.**

(a) * * *

(4) Except as provided in paragraphs (b) through (d) of this section, the draws shall open on signal.

(b) * * *

(1) The draw shall open on signal, except that from May 1 through September 30, 12 midnight to 5 a.m. and from October 1 through April 30, 8 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

* * * * *

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge at mile 0.05, between Salem and Beverly shall open on signal, except that from 12 midnight to 5 a.m. daily and on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

(d) The Essex County Kernwood Bridge at mile 1.0 shall open on signal, except that from May 1 through September 30, 12 midnight to 5 a.m. and from October 1 through April 30, 7 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Dated: July 5, 1995.

J.L. Linnon,

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

[FR Doc. 95–24524 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–14–M**

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## 33 CFR Part 117

**[CGD01–95–001]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Lagoon Pond, Tisbury, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the operating rules governing the Lagoon Pond Bridge over Lagoon Pond at mile 0.0 in Tisbury, Massachusetts. The operating rules formerly published at 33 CFR section 117.79 were deleted in error. This final rule will correct the deletion error and publish the operating regulations for the bridge.

**EFFECTIVE DATE:** November 2, 1995.

**ADDRESSES:** Documents referred to in this preamble are available for copying and inspection at the First Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On February 28, 1995, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Lagoon Pond, Tisbury, Massachusetts'' in the Federal Register (60 FR 10817). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Lagoon Pond Bridge over Lagoon Pond in Tisbury, Massachusetts has a vertical clearance of 15′ above mean high water (MHW) and 17′ above mean low water (MLW). Through an error, the previous special operating regulations for this bridge were deleted from 33 CFR section 117.79. Therefore, the bridge currently is required to open on signal at all times under general operating regulations. Regulations published in the Federal Register of October 7, 1982, (47 FR 44258) read as follows:

(a) The draw shall open on signal from September 16 through May 14 provided 24 hours advance notice is given.

(b) From May 15 through September 15, the draw will open on signal only from 8:15 a.m. to 8:45 a.m., 10:15 a.m. to 11 a.m., 3:15 p.m. to 4 p.m., 5 p.m. to 5:45 p.m., and 7:30 p.m. to 8 p.m. Throughout the remainder of this period, the draw will open for the passage of vessels if 4 (four) hours advance notice is given.

(c) The draw shall open at any time for public vessels of the United States, any vessels of state or municipal governments used for public safety, and in case of emergency or during severe storm conditions.

The bridge owner, the Massachusetts Highway Department (MHD), has been operating the bridge in accordance with the deleted regulations on an unofficial basis. The Coast Guard is changing the regulations to reinstate the operating hours of the bridge contained in the erroneously deleted rule.

Discussion of Comments and Changes

No comments were received on the notice of proposed rulemaking. No changes to the proposed rule have been made.

Regulatory Evaluation

This 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 rule 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 this rule will not prevent mariners from passing through the Lagoon Pond Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule 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. Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 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); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.600 is added to read as follows:

**§ 117.600 Lagoon Pond.**

The draw of the Lagoon Pond Bridge, mile 0.0 in Tisbury, Massachusetts, shall operate as follows:

(a) The draw shall open on signal from May 15 through September 15, from 8:15 a.m. to 8:45 a.m., from 10:15 a.m. to 11 a.m., from 3:15 p.m. to 4 p.m., from 5 p.m. to 5:45 p.m., and from 7:30 p.m. to 8 p.m. At all other times the draw will open for the passage of vessels if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) The draw shall open on signal from September 16 through May 14 if at least a twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of section 118.160 of this chapter.

*Appendix to Part 117—[Amended]*

3. Appendix A to Part 117 is amended by adding an entry in alphabetical order under the heading ''Massachusetts'' for Lagoon Pond to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| * * * | * | * | * | * | * | |
| Massachusetts: | | | | | | |
| * * * | * | * | * | * | * | |
| Lagoon Pond | 0.0 | Tisbury | Lagoon Pond—MHD | | 13 | 13 |
| * * * | * | * | * | * | * | |

Dated: July 5, 1995.

J.L. Linnon,

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

[FR Doc. 95–24522 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–14–M**

**33 CFR Part 117**

**[CGD01–94–150]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Saugus River, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the operating rules governing the Fox Hill SR107 Bridge at mile 2.5 over the Saugus River, between Saugus and Lynn, Massachusetts. This final rule will permit the bridge owner, the Massachusetts Highway Department (MHD), to reduce the number of hours in a day that the bridge will be crewed by drawtenders and opened on signal.

This final rule also provides that at all other times drawtenders would be on call for one hour advance notice openings. This action is being taken because there have been few requests for bridge openings during the time periods that the MHD proposes to operate the bridge on an on call basis. This will relieve the bridge owner of the unnecessary burden of having personnel at the bridge at all times.

**EFFECTIVE DATE:** November 2, 1995.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at the First Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On January 19, 1995, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Saugus River, Massachusetts'' in the Federal Register (60 FR 3791). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Fox Hill SR107 Bridge, mile 2.5 between Saugus and Lynn, Massachusetts, has a vertical clearance of 6′ above mean high water (MHW) and 16′ above mean low water (MLW). The existing regulations for the Fox Hill SR107 Bridge require it to open on signal at all times.

The MHD has requested authority to reduce the times when the bridge is crewed by drawtenders and to increase the times when the bridge is on a one (1) hour advance notice for openings. This request by MHD seeks relief from the unnecessary burden of crewing the bridge during times of infrequent requests for bridge openings.

Discussion of Comments and Changes

No comments were received on the notice of proposed rulemaking. No changes to the proposed rule have been made.

Regulatory Evaluation

This 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 rule 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 this rule will not prevent mariners from passing through the Fox Hill SR107 Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule 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. Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 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); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.618 is amended by adding paragraph (c) to read as follows:

**§ 117.618 Saugus River.**

* * * * *

(c) The Fox Hill SR107 Bridge at mile 2.5 shall open on signal, except that from October 1 through May 31, 7 p.m. to 5 a.m. daily, and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Dated: July 17, 1995.

J.L. Linnon,

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

[FR Doc. 95–24523 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–14–M

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## 33 CFR Part 117

**[CGD01–94–104]**

**RIN 2115 AE47**

## Drawbridge Operation Regulations; West Bay, Osterville, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has changed the operating rules governing the West Bay Bridge at mile 1.2 over West Bay in Osterville, Massachusetts. The special operating rules formerly published at 33 CFR section 117.78 were deleted in error. This final rule will correct the deletion error and publish the correct operating regulations for the bridge.

**EFFECTIVE DATE:** November 2, 1995.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at the First Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 233–8364 .

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On January 10, 1995 the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; West Bay, Osterville, Massachusetts'' in the Federal Register (60 FR 2562). The Coast Guard received no comments on the notice of proposed rules. No public hearing was requested, and none was held.

Background and Purpose

The West Bay Bridge over West Bay in Osterville, Massachusetts has a vertical clearance of 15′ above mean high water (MHW) and 17′ above mean low water (MLM). Through an error, the special operating rules for this bridge were deleted from 33 CFR 117.78. Therefore, the bridge is required to open on signal at all times under the general drawbridge operating regulations. Operating rules published in the Federal Register of October 7, 1982 (47 FR 44258) read as follows:

(a) The draw shall open on signal from April 1 though October 31 on the following schedule:

(1) April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) For the remainder of this period the draw will open on signal if 4 hours notice is given in advance.

(b) From November 1 through March 31 the draw shall open on signal if a 24-hour notice is given in advance.

The bridge has been operating in accordance with the deleted rules on an unofficial basis. The Coast Guard is publishing a final rule that will reinstate the operating hours of the bridge contained in the erroneously deleted rule.

Discussion of Comments and Changes

No comments were received on the notice of proposed rulemaking. No changes to the proposed rule have been made.

Regulatory Evaluation

This 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 rule 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 this rule will not prevent mariners from passing through the West Bay Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule 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. Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 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); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.622 is added to read as follows:

**§ 117.622 West Bay.**

(a) The draw of the West Bay Bridge, in Osterville, Massachusetts, shall open on signal from April 1 through October 31 on the following schedule:

(1) From April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) At all other times from April 1 through October 31, the draw shall open on signal if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) From November 1 through March 31, the draw shall open if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of section 118.160 of this chapter.

Dated: July 17, 1995.

J.L. Linnon,

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

[FR Doc. 95–24526 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–14–M

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## 33 CFR Part 117

**[CGD05 94–093]**

## Drawbridge Operation Regulations; Mullica River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of Burlington County, the Coast Guard is changing the regulations governing the Lower Bank bridge over the Mullica River at mile 15.0 between Atlantic and Burlington Counties, New Jersey. This change will extend the period during the winter months to include April when a four-hour advance notice for all bridge openings is required. This change is being made because there have been few requests for bridge openings during this time period.

**EFFECTIVE DATE:** November 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Kassof, Bridge Administrator—NY, Fifth Coast Guard District (212) 668–7069.

**SUPPLEMENTARY INFORMATION:**

Drafting Information

The principal persons involved in drafting this document are Mr. J. Arca, Fifth Coast Guard District, Bridge Branch-NY, Project Manager, and CAPT R. A. Knee, Fifth Coast Guard District Legal Office, Project Counsel.

Regulatory History

On February 13, 1995, the Coast Guard published a Notice of Proposed Rulemaking entitled ''Drawbridge Operation Regulations, Mullica River, New Jersey'' in the Federal Register (60 FR 8209). The comment period ended May 15, 1995. The Coast Guard received one comment on the notice of proposed rulemaking supporting the Coast Guard's proposed change to the regulations. A public hearing was not requested, and one was not held.

Background and Purpose

The Lower Bank highway bascule bridge over the Mullica River in Lower Bank, New Jersey, was replaced in 1993. The present bridge has a vertical clearance of 13 feet above mean high water (MHW) in the closed position which is 4 feet higher than the previous bridge. During the period from December 1993 through April 1994, a period of 151 days, the bridge opened on request on only 34 days. The current operating regulations implemented in January 1988 require the Lower Bank bridge to open on signal, except from April 1 through November 30 from 11 p.m. to 7 a.m., and from December 1 through March 31 from 4:30 p.m. to 8 a.m., a 4-hour advance notice is required for a bridge opening. This change to the regulations will include April in the winter seasonal restrictions and increase the 4-hour advance notice requirement to apply to all requests for bridge openings from December through April. This change will provide the bridge owner with relief from constantly having a person available to open the bridge at times when openings are not needed.

Regulatory Evaluation

This 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 rule 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 passing through the Lower Bank Bridge, but will require mariners to provide a 4-hour advance notice of their arrival from May 1 through November 30 between 11 p.m. and 7 a.m., and from December 1 to April 30 at all times. At all other times, the bridge will open on signal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and it has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e. (32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations to read 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. In section 117.731a paragraph (a) is revised to read as follows:

**§ 117.731a Mullica River.**

* * * * *

(a) The draw of the Lower Bank bridge, mile 15.0, need not open during the following periods unless at least four hours notice is given:

(1) From May 1 through November 30, from 11 p.m. to 7 a.m.

(2) From December 1 through April 30, at all times.

* * * * *

Dated: September 14, 1995.

W.J. Ecker,

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

[FR Doc. 95–24527 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 164**

**[CGD 93–022]**

**RIN 2115–AE41**

## Automated Dependent Surveillance Shipborne Equipment: Incorporation by Reference

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast amends the incorporation by reference provisions for the Automated Dependent Surveillance (ADS) Shipborne Equipment. Due to the development of new Differential Global Positioning System (DGPS) standards, the existing standard incorporated by reference, Radio Technical Commission for Maritime Services' (RTCM) Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0 contained in 33 CFR 164.03, has been superseded by new standards contained in Version 2.1. The Coast Guard is replacing Version 2.0 by incorporating the new standards contained in Version 2.1.

Additionally, Digital Selective Calling (DSC) standards for use with Vessel Traffic Services (VTS) and Maritime Mobile Services recently developed by the International Telecommunication Union Radiocommunication Bureau (ITU–R), are the new incorporation by reference.

The new DGPS standards will ensure that ADS is compatible with the Coast Guard national DGPS network. The standards will also provide additional user safety information such as differential station health indicators.

The new DSC standards will ensure that the Automated Dependent Surveillance Shipborne Equipment (ADSSE), built by various manufacturers, will provide the same message in an internationally accepted format.

**DATES:** *Effective Date:* November 2, 1995.

Incorporation by reference: The Director of the Federal Register approves as of November 2, 1995, the incorporation by reference of certain publications listed in the regulations.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** Irene Hoffman, Project Manager, Vessel Traffic Services Division. The telephone number is 202–267–6277.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On April 20, 1995, the Coast Guard published a notice of proposed rulemaking entitled Automated Dependent Surveillance Shipborne Equipment: Incorporation by Reference in the Federal Register (60 FR 19699). The Coast Guard received no letters on the proposal. No public meeting was requested, and none was held.

### Background and Purpose

Section 5004 of the Oil Pollution Act of 1990, as codified in 33 U.S.C. 2734, directed the Coast Guard to acquire, install, and operate additional equipment, as necessary, to provide surveillance of tank vessels carrying oil from the Trans-Alaskan Pipeline through Prince William Sound.

While endeavoring to meet the requirements of the Act, the Coast Guard investigated various types of surveillance systems, including radar and dependent surveillance systems. The Coast Guard determined an ADS system that uses DGPS would meet the Coast Guard's requirements without being cost prohibitive to the Government and the user. The shipboard portion of the system, ADSSE, includes a 12 channel all-in-view DGPS receiver, a marine radiobeacon band receiver capable of receiving DGPS error correction messages, a VHF/FM transceiver using DSC, and a control unit.

On July 17, 1992, the Coast Guard published a final rule, Prince William Sound Automated Dependent Surveillance System, in the Federal Register (57 FR 31660). This final rule amended the Prince William Sound VTS regulations by incorporating the use of ADS using DGPS. The regulation requires tank vessels of 20,000 DWT or more, transiting Prince William Sound, to carry operating ADSSE.

Since the publication of this regulation, the Coast Guard has determined that the use of ADS may expand beyond Prince William Sound. In order to facilitate future expansion into other areas of the U.S., the final rule amending the National VTS Regulations (59 FR 36316), divided the Prince William Sound Automated Dependent Surveillance System rule into two sections: (a) a navigation equipment rule (§ 164.43); and (b) a vessel operating rule for Prince William Sound (§ 165.1704). VTS Reporting Exemptions for vessels equipped with an operating ADSSE are set forth in § 161.23(c). The ''Incorporation by Reference'' section (§ 161.109) associated with this rule has been redesignated as § 164.03(b)(2).

### Discussion of Changes

Due to the development of new DGPS standards, the existing standard incorporated by reference, RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0 RTCM Paper 134–89/SC 104–68 incorporated in 33 CFR 164.03, has been superseded. Differential NAVSTAR GPS Service, Version 2.0, will be replaced with the new standards, RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.1 RTCM Paper 194–93/SC 104–STD, which have been developed with industry input and approved by RTCM.

Additionally, DSC standards for use with VTS and Maritime Mobile Service, Optional Expansion of the DSC System for use in the Maritime Mobile Service, ITU–R Recommendation M.821 and Characteristics of a Transponder System using DSC Techniques for use with VTS and Ship-to-Ship Identification, ITU–R Recommendation M.825, have been developed by the ITU–R with industry input and will also be incorporated by reference.

### Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

### Regulatory Evaluation

This 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 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The upgrade of DGPS receivers from Version 2.0 RTCM Paper 134–89/SC 104–68, to Version 2.1 RTCM Paper 194–93/SC 104–STD requires only a firmware upgrade. At least one manufacturer has indicated that this upgrade is available at no cost

to the user. Additionally, recent indications are that the cost to initially outfit tank vessel with DGPS equipment may be less than the original estimate of $50,000 per vessel. A more reasonable estimate now would be approximately $15,000 per vessel. The cost is expected to drop further as dependent surveillance is implemented in other U.S. ports and worldwide.

Small Entities

This regulation will only affect owners and operators of tank vessels of 20,000 or more DWT operating in Prince William Sound and carrying oil from the Trans-Alaska Pipeline. The construction and operating costs of vessels of this size is such that their owners tend to be major corporations or subsidiaries of major corporations. Business entities with the capital and operating costs of this magnitude do not meet the definition of ''small entitles''

Therefore the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

This rulemaking is intended to improve accuracy and reliability of vessel tracking equipment. It may benefit the environment by reducing the potential for catastrophic oil spills which may result from tank vessels involved in groundings, rammings, or collisions. While this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings, the impact is not expected to be significant enough to warrant further documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways, Incorporation by reference.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 164 as follows:

## PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502 sec. 4114(a), Pub.L. 101–380, 104 Stat. 517 (46 U.S.C. 3703 note). Sec. 164.61 also issued under 46 U.S.C. 6101.

2. Section 164.03 paragraph (b) is revised to read as follows:

**§ 164.03 Incorporated by reference.**

(a) * * *

(b) The materials approved for incorporation by reference in this part and the sections affected are:

| | |
|---|---|
| International Maritime Organization (IMO) 4 Albert Embankment, London, SE1 7SR, U.K. | |
| Recommendation on Performance Standards for Automatic Pilots, Resolution A.342(IX), adopted November 12, 1975 | 164.13 |
| Radio Technical Commission For Maritime Services (RTCM), 655 Fifteenth St., N.W., Suite 300, Washington, D.C. 20005 | |
| Minimum Performance Standards (MPS) Marine Loran C Receiving Equipment, RTCM Paper 12–78/DO–100, 1977 | 164.41 |
| RTCM, Recommended Standards for Differential NAVSTAR GPS Service, Version 2.1, RTCM Paper 194–93/SC 104–STD, 1994 | 164.43 |
| International Telecommunication Union Radiocommunication Bureau (ITU–R), Place de Nations CH–1211 Geneva 20 Switzerland | |
| Optional Expansion of the Digital Selective-Calling System for use in the Maritime Mobile Service ITU–R Recommendation M.821, 1992 | 164.43 |
| Characteristics of a Transponder System using Digital Selective-Calling Techniques for use with Vessel Traffic Services and Ship-to-Ship Identification, ITU–R Recommendation M.825, 1992 | 164.43 |

Dated: September 25, 1995.

J.A. Creech,

*Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 95–24529 Filed 10–2–95; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Public Land Order 7163

**[CO–935–1430–01; COC–55323]**

## Withdrawal of Public Lands for Protection of Archaeological and Paleontological Values; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraw 4,526.24 acres of public lands for 50 years for protection of archaeological, paleontological, and cultural values. The lands will be closed to location and entry under the mining laws. The lands have been and will remain open to mineral leasing.

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

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining

laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect archaeological, paleontologial, and cultural values:

Grand Junction Archaeological Sites

Rabbit Valley Research Natural Area

Sixth Principal Meridian

T. 10 S., R. 104 W.,
Sec. 8, E½SE¼SW¼, SE¼NE¼SE¼, and S½SE¼;
Sec. 9, SW¼NE¼SW¼, S½NW¼SW¼, and S½SW¼;
Sec. 16, N½NE¼NW¼ and NW¼NW¼;
Sec. 17, N½NE¼ and NE¼NE¼NW¼.

Sieber Canyon

Sixth Principal Meridian

T. 11 S., R. 103 W.,
Sec. 33, lot 1, E½NE¼, SW¼NE¼, N½SE¼, and SW¼SE¼;
Sec. 34, lots 2 to 6, inclusive, and 8, N½NW¼, and SW¼NW¼.
T. 12 S., R. 103 W.,
Sec. 3, SW¼NW¼ and W½SW¼;
Sec. 4 lots 5 to 7, inclusive, S½N½, and S½;
Sec. 5, lots 5 and 6, S½NE¼, and S½;
Sec. 6, lots 13 to 24, inclusive;
Sec. 7, lots 5 to 9, inclusive, W½NE¼, and NW¼SE¼.
T. 12 S., R. 104 W.,
Sec. 1, SE¼SE¼;
Sec. 12, lots 1 to 3 inclusive, and NW¼SE¼.

Dinosaur Hill Paleontological Area

Ute Principal Meridian

T. 1 N., R. 2 W.,
Sec. 29, NW¼NW¼.

McDonald Creek Cultural Resource Area

Sixth Principal Meridian

T. 10 S., R. 104 W.,
Sec. 19, E½SE¼SE¼;
Sec. 20, SW¼ and W½SE¼;
Sec. 29, W½;
Sec. 30, E½E½NE¼, SW¼SE¼NE¼, E½SE¼, SE¼NW¼SE¼, E½SW¼SE¼, and SW¼SW¼SE¼;
Sec. 31, East 10 chains of lot 11, E½NE¼, NW¼NE¼, E½SW¼NE¼, and NE¼SE¼;
Sec. 32, W½NW¼NE¼, SW¼NE¼, NW¼, SW¼SE¼NE¼, N½NW¼SW¼, and SW¼NW¼SW¼.

Split Rock Paleontological Area

Sixth Principal Meridian

T. 10 S., R. 104 W.,
Sec. 11, E½NE¼SW¼, SW¼NE¼SW¼, N½SE¼SW¼, NW¼SE¼, and NW¼SW¼SE¼.

Fruita Paleontological Site

Ute Principal Meridian

T. 1 N., R. 3 W.,
Sec. 13, S½SW¼ and SW¼SE¼;
Sec. 24, W½NE¼ and NW¼.

The areas described aggregate 4,526.24 acres of public lands in Mesa County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 15, 1995.

Bob Armstrong,

*Assistant Secretary of the Interior.*

[FR Doc. 95–24464 Filed 10–2–95; 8:45 am]

**BILLING CODE 4310–JB–M**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 301

**[Docket No. 950106003–5070–02; I.D. 092695C]**

## Pacific Halibut Fisheries; Reopen Area 2A Non-treaty Commercial Fishery

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

**ACTION:** Inseason action.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

**EFFECTIVE DATE:** Area 2A non-treaty commercial fishery reopening 8 a.m. through 6 p.m., local time, September 26, 1995.

**FOR FURTHER INFORMATION CONTACT:** Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

**SUPPLEMENTARY INFORMATION:** The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the Federal Register to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

*1995 Halibut Landing Report Number 15*

Area 2A Non-treaty Commercial Fishery To Reopen

The September 12 fishing period in Area 2A resulted in a catch of 4,000 lb (1.81 metric tons (mt)). The revised total commercial catch from Area 2A to date is 97,000 lb (43.99 mt), leaving approximately 8,000 lb (3.62 mt) to be taken.

Area 2A will reopen on September 26 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53′18″ N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

| Vessel class | | Fishing period limit (lb) | |
|---|---|---|---|
| Length | Letter | Dressed, head-on | Dressed, head-off * |
| 0–25 ..... | A | 225 | 200 |
| 26–30 ..... | B | 225 | 200 |
| 31–35 ..... | C | 285 | 250 |
| 36–40 ..... | D | 790 | 695 |
| 41–45 ..... | E | 850 | 750 |
| 46–50 ..... | F | 1,020 | 895 |
| 51–55 ..... | G | 1,135 | 1,000 |
| 56+ ..... | H | 1,705 | 1,500 |

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: September 26, 1995.

Richard W. Surdi,

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

[FR Doc. 95–24512 Filed 10–2–95; 8:45 am]

**BILLING CODE 3510–22–W**

# Proposed Rules

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 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 1280

**[No. LS–95–010]**

### Sheep Promotion, Research, and Information Program: Rules and Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement provisions of a proposed Sheep and Wool Promotion, Research, Education, and Information Order (Order), which would establish a national and industry-funded sheep and wool promotion, research, and information program if an Order is approved by producers, feeders, and importers voting in the initial referendum. A full proposal and four partial proposals were published previously in the Federal Register (60 FR 2874). This proposed rule establishes the collection and remittance process, puts into effect the reporting requirements, identifies and establishes the Harmonized Tariff Schedule (HTS) classification numbers, conversion factors, and assessment rates for imported sheep, sheep meat, wool, and wool products subject to assessment, establishes procedures for calculating, collecting, and remitting assessments on imported sheep, sheep meat, wool, and wool products and establishes the basis for exempting certain imported sheep and sheep products from assessment. Because the Sheep Promotion, Research, and Information Act of 1994 (Act) provides that raw wool will be exempted from the collecting provisions, raw wool is not subject to assessment.

**DATES:** Written comments must be received by November 2, 1995.

**ADDRESSES:** Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; PO Box 96456; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours in Room 2606, South Building, 14th and Independence Avenue, SW., Washington, DC 20250. All comments should reference the docket number and the date and page number of the issue of the Federal Register. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget (OMB); Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Invitation to submit proposals—60 FR 381 (January 4, 1995); Sheep and Wool Promotion, Research, Education, and Information Order—60 FR 28747 (June 2, 1995); and Procedures for the Conduct of Referendum—60 FR 40313 (August 8, 1995).

Regulatory Impact Analysis

*Executive Orders 12866 and 12778 and the Regulatory Flexibility Act*

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

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

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision.

The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceeding in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

The Administrator of AMS has considered the economic impact of this action on small entities to RFA.

There are an estimated 87,350 domestic sheep producers and feeders and an estimated 700 remittance persons who would be subject to the rules and regulations issued pursuant to the Order. There are also an estimated 9,000 importers who would become subject to the rules and regulations. Nearly every sheep producer, feeder, and importer would be classified as a small business under the criteria established by the Small Business Administration (13 CFR 121.601).

The Act provides for the establishment of a coordinated program of promotion and research designed to strengthen the sheep industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for sheep and sheep products. This program would be financed by assessments on domestic and imported sheep and sheep products which includes wool and products containing wool fibers. Pursuant to the Act, a proposed rule was published on June 2, 1995 (60 FR 28747). That action proposed a full proposal and four partial proposals.

This proposed rule establishes the collection and remittance process, puts into effect the reporting requirements of an Order, identifies and establishes HTS classification numbers, conversion factors, and assessment rates for imported sheep and sheep products

(sheep meat, wool, and wool products) subject to the assessment and establishes procedures for calculating, collecting, and remitting assessments on imported sheep, sheep meat, wool, and wool products and establishes the basis for exempting certain imported sheep and sheep products from assessment. Because the Act exempts raw wool from the collecting provisions, raw wool is not subject to assessment.

This rule will implement applicable Order provisions in the manner provided therein, if an Order is passed in referendum. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements for domestic producers, feeders, handlers, and processors of sheep and wool contained in part 1280 have been approved by OMB and assigned control number 0581–0093.

Based on comparable research and promotion programs, it would require approximately 0.5 hours per response for producers, feeders, handlers, and any persons other than the person making payment to the producer, feeder, or handler, to complete a reporting form on a monthly basis and file a request for reimbursement if necessary.

For importers, the Department of Agriculture (Department) intends to rely to a great extent on records maintained by the U.S. Customs Service (Customs) and records maintained by importers under Custom's requirements for its administration and enforcement of the provision of the proposed regulations. The Department anticipates that importers only would be required to provide additional information if needed as evidence of reimbursement of assessments.

Any person subject to the assessment, collection, and remittance provisions of the Act and the Order would be expected to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the Order and these regulations. Such books and records should be maintained for at least 2 years beyond the fiscal period of their applicability. Reporting forms would be submitted monthly.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

Background

The Act (7 U.S.C. 7101–7111) approved October 22, 1994, authorizes the Secretary to establish a national sheep and wool promotion, research, education, and information program, designed to strengthen the sheep industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for sheep and sheep products and to develop new markets and uses for sheep and sheep products. This program would be funded by assessments on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers would be assessed 1-cent-per-pound on live sheep imported and the equivalent of 1-cent-per-pound of live sheep for sheep products imported as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products would be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

Pursuant to the Act, a proposed rule was published in the June 2, 1995, Federal Register (60 FR 28747). That action proposed a full proposal and four partial proposals. If approved in referendum, a final Order would require that each person who makes payment to a sheep producer, feeder, or handler of sheep or sheep products be a collecting person who collects the assessment from the producer, feeder, or handler of sheep or sheep products and pass the collected assessment on to the subsequent purchaser pursuant to the Act. Any person who buys domestic live sheep or greasy wool for processing must collect the assessment from the producer, feeder, or handler and remit the assessment to the proposed National Sheep Promotion, Research, and Information Board (Board). Any person who processes or causes to be processed sheep or sheep products of the person's own production and markets the processed products would be required to pay an assessment and remit the assessment to the Board. Any person who exports live sheep or greasy wool would be required to pay an assessment and remit the assessment to the Board at the time of export. Finally, each person who imports sheep and sheep products—excluding raw wool—would be required to pay an assessment. Customs will collect the assessments on imported sheep and sheep products upon importation and will forward the assessments to AMS for disbursement to the Board.

The proposed Order further would define a collecting person as any person who is responsible for collecting an assessment pursuant to the Act, this subpart and these regulations, including processors and any other persons who are required to remit assessments to the Board, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder, shall pass the collected assessment on to the subsequent purchaser pursuant to the Act, this subpart and the regulations prescribed by the Board and approved by the Secretary.

For the purposes of the collection of assessments on imported wool and wool products by Customs, the Department proposes that the Harmonized Tariff Schedule (HTS) classification numbers published by the International Trade Commission be used to identify imported sheep and sheep products that would be subject to the assessment if the proposed Order becomes effective. The HTS classification system identifies each category of imported sheep, sheep meat, wool, and products that contains wool fiber by a 10-digit classification number and provides a brief description of the imported product that corresponds to the various classification numbers. Additionally, the HTS classification number may be further divided into multiple fiber categories for products that contain a blend of fibers.

In determining which HTS classification numbers would be assessed under this proposal, the primary objectives were to meet the intent of the Act by maximizing participation of imported sheep, sheep meat, wool, and wool products in the assessment collection provisions of the Act and minimizing the burden of administering those provisions. To make certain these objectives would be met, the Department reviewed 5 years—1989–93—of historical import data of sheep, sheep meat, wool, and products containing wool fibers from the Bureau of Census of the U.S. Department of Commerce. These data are available on

CD–ROM, entitled International Harmonized System Commodity Classification by Country by Customs District. The Department analyzed the total volume of imported sheep, sheep meat, wool, and wool products subject to the assessment by identifying the HTS classification numbers and corresponding conversion factors.

The Department identified over 700 HTS classification numbers during a review of the import library published by the Department's Economic Research Service (ERS). The Department has determined that of the approximately 700 HTS classification numbers, slightly more than 600 are considered active or potentially subject to assessment. These numbers are continually updated, deleted, or expanded, thereby eliminating existing HTS categories or creating new ones. Based on the projected revenue for imported sheep and sheep products, of the nearly 600 active HTS classification numbers for sheep and sheep products, the Department has identified 340 HTS classification numbers that would account for over 99 percent of the total projected import revenues. Accordingly, the Department proposes to limit the collection of assessments to this lower number, thereby exempting a significant number of low volume HTS categories.

Limiting the number of imported sheep and sheep products that would be subject to assessments would reduce the administrative cost and burden on Customs and importers, and would reduce administrative costs to the Board, while allowing the Board to collect the vast majority of potential import assessments.

Some of the sheep and sheep products identified by the 340 HTS classification numbers may be permitted to enter into the United States duty-free pursuant to applicable rules and regulations issued by Customs and as a result, Customs would not collect an assessment on those products. However, if an otherwise duty-free imported sheep or sheep product were to be assessed, an importer would be entitled to reimbursement if the importer provides to the Board proper documentation that the product was exempt from import duties under Customs regulations and that an assessment had been paid.

Because import assessments are based on a live-weight equivalent for imported sheep meat and degreased wool, or its equivalent for wool and wool products, the Department proposes to use conversion factors developed and published by ERS to convert imported sheep products to the required live-weight equivalents, degreased wool, or degreased wool equivalents to determine the amount of assessment due on each HTS category upon importation. These conversion factors are available for the 700 HTS classification numbers and are updated and maintained as an import library. For sheep meat, these conversion factors take into account removal of bone, weight lost in processing or cooking, and the nonsheep components of the sheep products. For wool and products containing wool fibers, these conversion factors take into account fiber loss during processing, fabric trim loss, and cutting loss for wool, and other nonsheep components of wool and wool products. The Department proposes to use these conversion factors for calculating the assessment because calculating carcass equivalents and wool content for each individual product before entry would be both costly and impractical.

The factors for calculating the assessment on imported sheep, sheep meat, wool, and products containing wool fiber include the (1) HTS classification number, (2) conversion factor, (3) assessment rate as established under the Act, and (4) dressing percentage. Based on a 9 year average—1980–89—the average dressing percentage for sheep in the United States is 50.2 percent as published by ERS in the 1992 edition of Conversion Factors, Weights and Measures of Agricultural Commodities and Their Products.

Imported live sheep require no conversion because each animal will be assessed based on its live weight.

Examples of calculating the assessment on sheep, sheep meat, wool, and products containing wool fibers are as follows:

*Example I*

To calculate the assessment for live sheep, an importer would multiply the total weight of imported live sheep by 1-cent-per-pound. The following example illustrates a typical calculation for imported live sheep:

| | |
|---|---|
| HTS 0104100000, Live sheep: | |
| Live Weight | 125 lbs. |
| Assessment rate | ×$0.01/lb. |
| Assessment | $1.25 |

*Examples II and III*

To calculate the assessment for imported sheep meat, an importer would (1) Multiply the total weight of imported sheep meat by the conversion to determine the total carcass weight equivalent, then (2) divide the total carcass weight equivalent by 50.2 percent to calculate the live animal equivalent, and (3) multiply the live animal equivalent by 1-cent-pound. The following examples illustrate two typical sheep meat calculations:

| | |
|---|---|
| 1. Sheep Meat (Bone-in): | |
| HTS 0204100000, Carcasses and half carcasses of lamb, fresh or chilled: | |
| Net Weight | 1,000 lbs. |
| Conversion factor | ×1.00 |
| Carcass weight equivalent. | =1,000 lbs. |
| Average dressing percent. | ÷50.2%. |
| Live weight equivalent | =1992.03 lbs. |
| Assessment rate | ×$0.01/lb. |
| Assessment | $19.92 |
| 2. Sheep Meat (Boneless): | |
| HTS 0204232000, Boneless lamb: | |
| Net Weight | 1,000 lbs. |
| Conversion factor | ×1.52 |
| Carcass weight equivalent. | =1,520 lbs. |
| Average dressing percent. | ÷50.2% |
| Live weight equivalent | =3,027.89 lbs. |
| Assessment rate | ×$0.01/lb. |
| Assessment | $30.28 |

*Example IV*

To calculate the assessment for imported wool and wool products, an importer would (1) Multiply the total weight of wool or wool products imported under each HTS number by the corresponding conversion factor, and (2) multiply the raw clean wool content by the assessment rate. The following example illustrates a typical calculation:

| | |
|---|---|
| HTS 6201110010, Mens or boys overcoats of wool or fine animal hair: | |
| Net Weight | 2,000 lbs. |
| Conversion factor | ×0.9774rn,s |
| Clean wool content | =1,954.8 lbs. |
| Assessment rate | ×$0.02/lb. |
| Assessment | $39.10 |

A table in the regulation would list the applicable HTS classification numbers representing imported sheep, sheep meat, wool, and products containing wool fibers subject to assessment, the corresponding conversion factors and the assessment rate per pound and per kilogram for each product, except in the case of raw wool which is exempt from assessment.

List of Subjects in 7 CFR part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, it is proposed that Title 7 of the CFR, part 1280 be amended as follows:

## PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR Part 1280 continues to read as follows:

Authority: 7 U.S.C. 7101–7111.

2. In Part 1280, Subpart B is added to read as follows:

### Subpart B—Rules and Regulations

*Definitions*

Sec.
1280.301 Terms defined.

*Assessments*

1280.310 Assessments on domestic sheep and sheep products.
1280.311 Late payment charges.
1280.312 Assessments on imported sheep and sheep products.
1280.313 Collecting persons for purposes of collection of assessments.
1280.314 Remittance persons for purposes of remitting assessments.
1280.315 Remittance of assessments and submission of reports to the National Sheep Promotion, Research, and Information Board.
1280.316 Evidence of payment of assessments.
1280.317 Books and records.
1280.318 OMB control numbers.

## Subpart B—Rules and Regulations

Definitions

### § 1280.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

Assessments

### § 1280.310 Assessments on domestic sheep and sheep products.

(a) Domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool will be assessed 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold.

(b) Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold.

(c) If more than one producer, feeder, handler, or exporter shares the proceeds received for the sheep or sheep products sold, each such producer, feeder, handler, or exporter is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, handler's, or exporter's proportionate share of the proceeds.

(d) Failure of the purchaser or collecting person to collect the assessment and pass along the assessment to the next purchaser, if necessary, and finally to the processor, as required in § 1280.313, shall not relieve the producer, feeder, or the collecting person of their obligation to pay the assessment to the feeder, collecting person, or processor and to remit the assessment to Board.

### § 1280.311 Late payment charges.

(a) Assessments shall be remitted to the address designated by the Board by the 15th day of the month following the month in which domestic sheep or wool was purchased for processing.

(b) Any unpaid assessments due to the Board from any person responsible for remitting the assessment shall be increased 2 percent the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid assessments and late payment charges previously owed pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment calculated after the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is determined by the postmark date on the envelope or the date of receipt by the Board, whichever is earlier. If the 15th day falls on a Sunday or a holiday, then the assessment will be due the following day.

### § 1280.312 Assessments on imported sheep and sheep products.

(a) Importers will be assessed 1-cent-per-pound on live sheep imported, the equivalent of 1-cent-per-pound of live sheep for imported sheep products, and 2-cents-per-pound of imported degreased wool or the equivalent of imported degreased wool for wool and wool products. Imported raw wool will be exempt from assessments.

(b) Table I, Imported Sheep and Sheep Products Assessment Table, contains the applicable HTS classification numbers of sheep, sheep meat, wool, and wool products, conversion factors and assessment rates in dollars per pound and dollars per kilograms for imported sheep, sheep products, wool, and wool products subject to the assessment. Because raw wool is exempt from the assessment collection provisions, HTS classification numbers for imported raw wool are not included in the table.

(c) In the event that any HTS classification number is changed, replaced by another number and has no impact on the physical properties or description of sheep meat, or wool and wool products, assessments will continue to be collected based on the HTS classification number.

(d) All imported sheep and sheep products identified by the HTS classification numbers listed in Table I, are subject to assessment, except that assessments will not be collected on those sheep and sheep products on which an import duty is not due pursuant to regulations issued by Customs. Importers shall be entitled to reimbursement from the Board on all sheep and sheep products on which assessments were collected by Customs but on which import duties were not due. To obtain a reimbursement when such reimbursement is due, an importer must submit to the Board a written request together with copies of Custom documents that prove import duties were not due.

TABLE I.—IMPORTED SHEEP AND SHEEP PRODUCTS ASSESSMENT TABLE

[Live Sheep]

| HTS | Assessment | |
|---|---|---|
| | $/lb | $/kg |
| 0104100000 | 0.010000 | 0.022046 |

[Sheep Meat]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 0204100000 | 1.00 | 0.019920 | 0.043916 |
| 0204210000 | 1.00 | 0.019920 | 0.043916 |
| 0204222000 | 1.00 | 0.019920 | 0.043916 |
| 0204224000 | 1.00 | 0.019920 | 0.043916 |
| 0204232000 | 1.52 | 0.030279 | 0.066753 |
| 0204234000 | 1.52 | 0.030279 | 0.066753 |
| 0204300000 | 1.00 | 0.019920 | 0.043916 |
| 0204410000 | 1.00 | 0.019920 | 0.043916 |
| 0204422000 | 1.00 | 0.019920 | 0.043916 |
| 0204424000 | 1.00 | 0.019920 | 0.043916 |
| 0204432000 | 1.52 | 0.030279 | 0.066753 |
| 0204434000 | 1.52 | 30.030279 | 0.066753 |

[Wool and Products Containing Wool Fiber]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 5007106030 | 0.5546 | 0.011092 | 0.024454 |
| 5007906030 | 0.5546 | 0.011092 | 0.024454 |
| 5103100000 | 1.0870 | 0.021740 | 0.047929 |
| 5103200000 | 1.0870 | 0.021740 | 0.047929 |
| 5104000000 | 1.0000 | 0.020000 | 0.044092 |
| 5105100000 | 1.0309 | 0.020618 | 0.045454 |
| 5105210000 | 1.1111 | 0.022220 | 0.048991 |
| 5105290000 | 1.1111 | 0.022220 | 0.048991 |
| 5106100010 | 1.0870 | 0.021740 | 0.047929 |
| 5106100090 | 1.0870 | 0.021740 | 0.047929 |
| 5106200000 | 0.5435 | 0.010869 | 0.023962 |
| 5107100000 | 1.0870 | 0.021740 | 0.047929 |
| 5107200000 | 0.5435 | 0.010869 | 0.023962 |
| 5109102000 | 1.0870 | 0.021740 | 0.047929 |
| 5111113000 | 1.1091 | 0.022183 | 0.048904 |
| 5111117030 | 1.1091 | 0.022183 | 0.048904 |
| 5111117060 | 1.1091 | 0.022183 | 0.048904 |
| 5111191000 | 1.1091 | 0.022183 | 0.048904 |
| 5111192000 | 1.1091 | 0.022183 | 0.048904 |
| 5111196020 | 0.5546 | 0.011092 | 0.024454 |
| 5111196040 | 0.5546 | 0.011092 | 0.024454 |
| 5111196060 | 1.1091 | 0.022183 | 0.048904 |
| 5111196080 | 1.1091 | 0.022183 | 0.048904 |
| 5111200500 | 0.5546 | 0.011092 | 0.024454 |
| 5111209000 | 0.5546 | 0.011092 | 0.024454 |
| 5111300500 | 0.5546 | 0.011092 | 0.024454 |
| 5111309000 | 0.5546 | 0.011092 | 0.024454 |
| 5111903000 | 0.5546 | 0.011092 | 0.024454 |
| 5111909000 | 0.8319 | 0.016638 | 0.036679 |
| 5112111000 | 0.9982 | 0.019964 | 0.044013 |
| 5112112030 | 1.1091 | 0.022183 | 0.048904 |
| 5112112060 | 0.9982 | 0.019964 | 0.044013 |
| 5112192000 | 1.1091 | 0.022183 | 0.048904 |
| 5112199010 | 1.1091 | 0.022183 | 0.048904 |
| 5112199020 | 1.1091 | 0.022183 | 0.048904 |
| 5112199030 | 1.1091 | 0.022183 | 0.048904 |
| 5112199040 | 1.1091 | 0.022183 | 0.048904 |
| 5112199050 | 1.1091 | 0.022183 | 0.048904 |
| 5112199060 | 1.1091 | 0.022183 | 0.048904 |
| 5112201000 | 0.5546 | 0.011092 | 0.024454 |
| 5112203000 | 0.5546 | 0.011092 | 0.024454 |
| 5112301000 | 0.5546 | 0.011092 | 0.024454 |
| 5112303000 | 0.5546 | 0.011092 | 0.024454 |
| 5112903000 | 0.6655 | 0.013311 | 0.029345 |
| 5112904000 | 0.8319 | 0.016638 | 0.036679 |
| 5112909010 | 0.5546 | 0.011092 | 0.024454 |
| 5112909090 | 0.5546 | 0.011092 | 0.024454 |
| 5212231020 | 0.4991 | 0.009982 | 0.022007 |
| 5309292000 | 0.5546 | 0.011092 | 0.024454 |
| 5407920520 | 0.4991 | 0.009982 | 0.022007 |
| 5407921010 | 0.2218 | 0.004437 | 0.009782 |
| 5407921020 | 0.2218 | 0.004437 | 0.009782 |

[Wool and Products Containing Wool Fiber]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 5407931000 | 0.2218 | 0.004437 | 0.009782 |
| 5408310520 | 0.4991 | 0.009982 | 0.022007 |
| 5408321000 | 0.2218 | 0.004437 | 0.009782 |
| 5408341000 | 0.2218 | 0.004437 | 0.009782 |
| 5509520000 | 0.3804 | 0.007608 | 0.016773 |
| 5509610000 | 0.1630 | 0.003260 | 0.007187 |
| 5509910000 | 0.3804 | 0.007608 | 0.016773 |
| 5510200000 | 0.3804 | 0.007608 | 0.016773 |
| 5515130510 | 0.4991 | 0.009982 | 0.022007 |
| 5515130520 | 0.4991 | 0.009982 | 0.022007 |
| 5515131010 | 0.2218 | 0.004437 | 0.009782 |
| 5515131020 | 0.2218 | 0.004437 | 0.009782 |
| 5515220510 | 0.4991 | 0.009982 | 0.022007 |
| 5515221000 | 0.2218 | 0.004437 | 0.009782 |
| 5515920510 | 0.4991 | 0.009982 | 0.022007 |
| 5515920520 | 0.4991 | 0.009982 | 0.022007 |
| 5515921010 | 0.2218 | 0.004437 | 0.009782 |
| 5515921020 | 0.2218 | 0.004437 | 0.009782 |
| 5516311000 | 0.2218 | 0.004437 | 0.009782 |
| 5516320520 | 0.4991 | 0.009982 | 0.022007 |
| 5516321000 | 0.2218 | 0.004437 | 0.009782 |
| 5516330510 | 0.4991 | 0.009982 | 0.022007 |
| 5516330520 | 0.4991 | 0.009982 | 0.022007 |
| 5516331000 | 0.2218 | 0.004437 | 0.009782 |
| 5516341000 | 0.2218 | 0.004437 | 0.009782 |
| 5601290020 | 0.9428 | 0.018856 | 0.041570 |
| 5602109010 | 1.1091 | 0.022183 | 0.048904 |
| 5602109090 | 0.5546 | 0.011092 | 0.024454 |
| 5602210000 | 1.1091 | 0.022183 | 0.048904 |
| 5701101300 | 0.9783 | 0.019566 | 0.043135 |
| 5701101600 | 0.9783 | 0.019566 | 0.043135 |
| 5701104000 | 0.9783 | 0.019566 | 0.043135 |
| 5701109000 | 0.9783 | 0.019566 | 0.043135 |
| 5702101000 | 0.8315 | 0.016630 | 0.036662 |
| 5702109010 | 0.8315 | 0.016630 | 0.036662 |
| 5702311000 | 0.7853 | 0.015706 | 0.034625 |
| 5702312000 | 0.6467 | 0.012934 | 0.028514 |
| 5702411000 | 0.7853 | 0.015706 | 0.034625 |
| 5702412000 | 0.6929 | 0.013859 | 0.030551 |
| 5702512000 | 0.7853 | 0.015706 | 0.034625 |
| 5702514000 | 0.7853 | 0.015706 | 0.034625 |
| 5702913000 | 0.8315 | 0.016630 | 0.036662 |
| 5702914000 | 0.7853 | 0.015706 | 0.034625 |
| 5703100000 | 0.7993 | 0.015986 | 0.035243 |
| 5704100010 | 0.7466 | 0.014932 | 0.032919 |
| 5704900010 | 0.9332 | 0.018664 | 0.041147 |
| 5705002010 | 0.7466 | 0.014932 | 0.032919 |
| 5801100000 | 1.1091 | 0.022183 | 0.048904 |
| 5801902090 | 1.1091 | 0.022183 | 0.048904 |
| 5805002000 | 1.1091 | 0.022183 | 0.048904 |
| 5805002500 | 1.1091 | 0.022183 | 0.048904 |
| 5810991000 | 1.1091 | 0.022183 | 0.048904 |
| 5903903010 | 0.5546 | 0.011092 | 0.024454 |
| 6001290000 | 1.1322 | 0.022644 | 0.049921 |
| 6002410000 | 1.1322 | 0.022644 | 0.049921 |
| 6002490000 | 1.1322 | 0.022644 | 0.049921 |
| 6002910000 | 1.1322 | 0.022644 | 0.049921 |
| 6101100000 | 1.0533 | 0.021066 | 0.046442 |
| 6102100000 | 1.0533 | 0.021066 | 0.046442 |
| 6102301000 | 0.5266 | 0.010532 | 0.023219 |
| 6103110000 | 0.8806 | 0.017612 | 0.038828 |
| 6103122000 | 0.1887 | 0.003773 | 0.008319 |
| 6103310000 | 1.0293 | 0.020586 | 0.045384 |
| 6103411010 | 0.8615 | 0.017230 | 0.037986 |
| 6103412000 | 0.8615 | 0.017230 | 0.037986 |
| 6103431020 | 0.4923 | 0.009846 | 0.021708 |
| 6104110000 | 0.9007 | 0.018014 | 0.039714 |
| 6104310000 | 0.9007 | 0.018014 | 0.039714 |
| 6104331000 | 0.5147 | 0.010293 | 0.022692 |
| 6104332000 | 0.1287 | 0.002573 | 0.005673 |
| 6104391000 | 0.1287 | 0.002573 | 0.005673 |

[Wool and Products Containing Wool Fiber]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 6104410010 | 1.0064 | 0.020128 | 0.044374 |
| 6104431010 | 0.5032 | 0.010064 | 0.022187 |
| 6104432010 | 0.1258 | 0.002517 | 0.005549 |
| 6104432020 | 0.1258 | 0.002517 | 0.005549 |
| 6104441000 | 0.5032 | 0.010064 | 0.022187 |
| 6104442010 | 0.1258 | 0.002517 | 0.005549 |
| 6104442020 | 0.1258 | 0.002517 | 0.005549 |
| 6104510000 | 1.0411 | 0.020822 | 0.045904 |
| 6104531000 | 0.5206 | 0.010412 | 0.022954 |
| 6104532010 | 0.1301 | 0.002602 | 0.005737 |
| 6104532020 | 0.1301 | 0.002602 | 0.005737 |
| 6104591000 | 0.5206 | 0.010412 | 0.022954 |
| 6104591030 | 0.1301 | 0.002602 | 0.005737 |
| 6104610010 | 0.8256 | 0.016512 | 0.036402 |
| 6104631510 | 0.4718 | 0.009436 | 0.020803 |
| 6105201000 | 0.4617 | 0.009234 | 0.020357 |
| 6105901000 | 0.8080 | 0.016160 | 0.035626 |
| 6105908020 | 0.5420 | 0.010840 | 0.023898 |
| 6106201010 | 0.4818 | 0.009636 | 0.021243 |
| 6106201020 | 0.4818 | 0.009636 | 0.021243 |
| 6106901010 | 0.8432 | 0.016864 | 0.037178 |
| 6107992000 | 0.8256 | 0.016512 | 0.036402 |
| 6108992000 | 0.8167 | 0.016334 | 0.036010 |
| 6109901530 | 0.8432 | 0.016864 | 0.037178 |
| 6110101010 | 1.2866 | 0.025733 | 0.056730 |
| 6110101020 | 1.2866 | 0.025733 | 0.056730 |
| 6110101030 | 1.2866 | 0.025733 | 0.056730 |
| 6110101040 | 1.2866 | 0.025733 | 0.056730 |
| 6110101050 | 1.2866 | 0.025733 | 0.056730 |
| 6110101060 | 1.2866 | 0.025733 | 0.056730 |
| 6110102010 | 0.9007 | 0.018014 | 0.039714 |
| 6110102020 | 0.9007 | 0.018014 | 0.039714 |
| 6110102030 | 0.9007 | 0.018014 | 0.039714 |
| 6110102040 | 0.9007 | 0.018014 | 0.039714 |
| 6110102050 | 0.9007 | 0.018014 | 0.039714 |
| 6110102060 | 0.9007 | 0.018014 | 0.039714 |
| 6110102070 | 0.9007 | 0.018014 | 0.039714 |
| 6110102080 | 0.9007 | 0.018014 | 0.039714 |
| 6110301510 | 0.5147 | 0.010293 | 0.022692 |
| 6110301520 | 0.5147 | 0.010293 | 0.022692 |
| 6110301530 | 0.5147 | 0.010293 | 0.022692 |
| 6110301540 | 0.5147 | 0.010293 | 0.022692 |
| 6110301550 | 0.5147 | 0.010293 | 0.022692 |
| 6110301560 | 0.5147 | 0.010293 | 0.022692 |
| 6110303010 | 0.1930 | 0.003861 | 0.008512 |
| 6110303015 | 0.1930 | 0.003861 | 0.008512 |
| 6110303020 | 0.1930 | 0.003861 | 0.008512 |
| 6110303025 | 0.1930 | 0.003861 | 0.008512 |
| 6110303030 | 0.1930 | 0.003861 | 0.008512 |
| 6110303035 | 0.1930 | 0.003861 | 0.008512 |
| 6110303040 | 0.1930 | 0.003861 | 0.008512 |
| 6110303045 | 0.1930 | 0.003861 | 0.008512 |
| 6110303050 | 0.1930 | 0.003861 | 0.008512 |
| 6110303055 | 0.1930 | 0.003861 | 0.008512 |
| 6110909012 | 0.5790 | 0.011581 | 0.025531 |
| 6110909028 | 0.5790 | 0.011581 | 0.025531 |
| 6110909074 | 0.5790 | 0.011581 | 0.025531 |
| 6111100010 | 1.1076 | 0.022152 | 0.048836 |
| 6111100030 | 1.1076 | 0.022152 | 0.048836 |
| 6114100040 | 0.8806 | 0.017612 | 0.038828 |
| 6114100050 | 0.8806 | 0.017612 | 0.038828 |
| 6114100070 | 0.8806 | 0.017612 | 0.038828 |
| 6115199020 | 1.1322 | 0.022644 | 0.049921 |
| 6115910000 | 0.9058 | 0.018116 | 0.039939 |
| 6115932010 | 0.4529 | 0.009058 | 0.019968 |
| 6116109500 | 0.0834 | 0.001668 | 0.003677 |
| 6116910000 | 0.9535 | 0.019070 | 0.042042 |
| 6116936400 | 0.4767 | 0.009534 | 0.021019 |
| 6116937400 | 0.4767 | 0.009534 | 0.021019 |
| 6116938800 | 0.1788 | 0.003575 | 0.007882 |
| 6116939400 | 0.1788 | 0.003575 | 0.007882 |

[Wool and Products Containing Wool Fiber]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 6116999530 | 0.3576 | 0.007152 | 0.015768 |
| 6117101000 | 1.0727 | 0.021454 | 0.047298 |
| 6117102010 | 0.4767 | 0.009534 | 0.021019 |
| 6117809020 | 0.9635 | 0.019270 | 0.042483 |
| 6117809030 | 0.5959 | 0.011919 | 0.026276 |
| 6201110010 | 1.0199 | 0.020398 | 0.044970 |
| 6201110020 | 1.0199 | 0.020398 | 0.044970 |
| 6201122010 | 0.0637 | 0.001274 | 0.002809 |
| 6201133010 | 0.4590 | 0.009180 | 0.020238 |
| 6201134015 | 0.0510 | 0.001021 | 0.002250 |
| 6201134030 | 0.1020 | 0.002039 | 0.004495 |
| 6201134040 | 0.1020 | 0.002039 | 0.004495 |
| 6201199020 | 0.6374 | 0.012748 | 0.028104 |
| 6201911000 | 0.9970 | 0.019939 | 0.043958 |
| 6201912011 | 0.9970 | 0.019939 | 0.043958 |
| 6201912021 | 0.9970 | 0.019939 | 0.043958 |
| 6201932511 | 0.4985 | 0.009970 | 0.021980 |
| 6202110010 | 0.8823 | 0.017646 | 0.038901 |
| 6202110020 | 0.8823 | 0.017646 | 0.038901 |
| 6202122010 | 0.0630 | 0.001261 | 0.002779 |
| 6202133010 | 0.5804 | 0.011608 | 0.025591 |
| 6202134005 | 0.0645 | 0.001290 | 0.002843 |
| 6202134030 | 0.1290 | 0.002584 | 0.005697 |
| 6202911000 | 1.0083 | 0.020167 | 0.044459 |
| 6202912011 | 1.0083 | 0.020167 | 0.044459 |
| 6202912021 | 1.0083 | 0.020167 | 0.044459 |
| 6202934011 | 0.5672 | 0.011344 | 0.025009 |
| 6203111000 | 0.6302 | 0.012603 | 0.027785 |
| 6203112000 | 0.6302 | 0.012603 | 0.027785 |
| 6203121000 | 0.5672 | 0.011344 | 0.025009 |
| 6203310010 | 1.0713 | 0.021426 | 0.047236 |
| 6203310020 | 1.0713 | 0.021426 | 0.047236 |
| 6203331030 | 0.5672 | 0.011344 | 0.025009 |
| 6203331050 | 0.4767 | 0.009534 | 0.021019 |
| 6203399020 | 0.6302 | 0.012604 | 0.027787 |
| 6203410510 | 0.9859 | 0.019718 | 0.043470 |
| 6203410520 | 0.9859 | 0.019718 | 0.043470 |
| 6203433010 | 0.5425 | 0.010850 | 0.023921 |
| 6203433020 | 0.5425 | 0.010850 | 0.023921 |
| 6204110000 | 0.9453 | 0.018906 | 0.041680 |
| 6204131000 | 0.5672 | 0.011344 | 0.025009 |
| 6204132010 | 0.1891 | 0.003782 | 0.008337 |
| 6204191000 | 0.5672 | 0.011344 | 0.025009 |
| 6204192000 | 0.1891 | 0.003782 | 0.008337 |
| 6204210010 | 0.8823 | 0.017646 | 0.038901 |
| 6204210030 | 0.8823 | 0.017646 | 0.038901 |
| 6204312010 | 1.0713 | 0.021426 | 0.047236 |
| 6204312020 | 1.0713 | 0.021426 | 0.047236 |
| 6204334010 | 0.5042 | 0.010084 | 0.022231 |
| 6204335010 | 0.0630 | 0.001261 | 0.002779 |
| 6204335020 | 0.0630 | 0.001261 | 0.002779 |
| 6204392010 | 0.5042 | 0.010084 | 0.022231 |
| 6204393010 | 0.0630 | 0.001261 | 0.002779 |
| 6204398020 | 0.5672 | 0.011344 | 0.025009 |
| 6204412010 | 1.0475 | 0.020950 | 0.046186 |
| 6204412020 | 1.0475 | 0.020950 | 0.046186 |
| 6204433010 | 0.4930 | 0.009860 | 0.021737 |
| 6204434010 | 0.4930 | 0.009860 | 0.021737 |
| 6204434020 | 0.4930 | 0.009860 | 0.021737 |
| 6204434030 | 0.3081 | 0.006163 | 0.013587 |
| 6204434040 | 0.3081 | 0.006163 | 0.013587 |
| 6204443010 | 0.5042 | 0.010084 | 0.022231 |
| 6204444010 | 0.5042 | 0.010084 | 0.022231 |
| 6204444020 | 0.5042 | 0.010084 | 0.022231 |
| 6204510010 | 1.0318 | 0.020636 | 0.045495 |
| 6204510020 | 1.0318 | 0.020636 | 0.045495 |
| 6204532010 | 0.5159 | 0.010318 | 0.022747 |
| 6204592010 | 0.5159 | 0.010318 | 0.022747 |
| 6204593010 | 0.5159 | 0.010318 | 0.022747 |
| 6204593020 | 0.5159 | 0.010318 | 0.022747 |
| 6204594020 | 0.5804 | 0.011608 | 0.025591 |

[Wool and Products Containing Wool Fiber]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 6204611010 | 0.9645 | 0.019290 | 0.042527 |
| 6204611020 | 0.9645 | 0.019290 | 0.042527 |
| 6204619010 | 0.9645 | 0.019290 | 0.042527 |
| 6204619020 | 0.9645 | 0.019290 | 0.042527 |
| 6204619040 | 0.9645 | 0.019290 | 0.042527 |
| 6204632510 | 0.4822 | 0.009644 | 0.021261 |
| 6204692010 | 0.4822 | 0.009644 | 0.021261 |
| 6204692030 | 0.4822 | 0.009644 | 0.021261 |
| 6204693020 | 0.6028 | 0.012056 | 0.026579 |
| 6204699020 | 0.5425 | 0.010850 | 0.023921 |
| 6204699030 | 0.1808 | 0.003617 | 0.007974 |
| 6204699050 | 0.1808 | 0.003617 | 0.007974 |
| 6205102010 | 0.9645 | 0.019290 | 0.042527 |
| 6205102020 | 0.9645 | 0.019290 | 0.042527 |
| 6205301510 | 0.4822 | 0.009644 | 0.021261 |
| 6205903050 | 0.0603 | 0.001206 | 0.002659 |
| 6205904040 | 0.1206 | 0.002412 | 0.005317 |
| 6206203010 | 0.9645 | 0.019290 | 0.042527 |
| 6206203020 | 0.9645 | 0.019290 | 0.042527 |
| 6206402510 | 0.5425 | 0.010850 | 0.023921 |
| 6207992000 | 0.8627 | 0.017253 | 0.038036 |
| 6208920010 | 0.0616 | 0.001232 | 0.002716 |
| 6208920030 | 0.0616 | 0.001232 | 0.002716 |
| 6209100000 | 0.8260 | 0.016520 | 0.036420 |
| 6211310030 | 0.9453 | 0.018906 | 0.041680 |
| 6211310040 | 0.9453 | 0.018906 | 0.041680 |
| 6211310051 | 0.9453 | 0.018906 | 0.041680 |
| 6211330052 | 0.6302 | 0.012603 | 0.027785 |
| 6211410040 | 0.9453 | 0.018906 | 0.041680 |
| 6211410050 | 1.0083 | 0.020167 | 0.044459 |
| 6211410055 | 1.0083 | 0.020167 | 0.044459 |
| 6211410061 | 1.0083 | 0.020167 | 0.044459 |
| 6211430064 | 0.6302 | 0.012603 | 0.027785 |
| 6211430074 | 0.6302 | 0.012603 | 0.027785 |
| 6212900020 | 0.7472 | 0.014944 | 0.032946 |
| 6214102000 | 0.3503 | 0.007006 | 0.015446 |
| 6214200000 | 0.9340 | 0.018681 | 0.041184 |
| 6214300000 | 0.1168 | 0.002335 | 0.005149 |
| 6214400000 | 0.1168 | 0.002335 | 0.005149 |
| 6214900010 | 0.0584 | 0.001168 | 0.002575 |
| 6215900010 | 1.1675 | 0.023350 | 0.051478 |
| 6216008000 | 1.2056 | 0.024112 | 0.053157 |
| 6217109020 | 0.8627 | 0.017253 | 0.038036 |
| 6217109030 | 0.1232 | 0.002465 | 0.005434 |
| 6217909010 | 0.1232 | 0.002465 | 0.005434 |
| 6217909030 | 0.8627 | 0.017253 | 0.038036 |
| 6217909035 | 0.1232 | 0.002465 | 0.005434 |
| 6217909085 | 0.1232 | 0.002465 | 0.005434 |
| 6301200010 | 0.9620 | 0.019240 | 0.042417 |
| 6301200020 | 0.9620 | 0.019240 | 0.042417 |
| 6301900030 | 0.1132 | 0.002264 | 0.004992 |
| 6302390010 | 0.9620 | 0.019240 | 0.042417 |
| 6304193040 | 0.9054 | 0.018109 | 0.039923 |
| 6304910050 | 0.7922 | 0.015845 | 0.034931 |
| 6304991000 | 1.1318 | 0.022636 | 0.049902 |
| 6304991500 | 1.1318 | 0.022636 | 0.049902 |
| 6304996010 | 1.1318 | 0.022636 | 0.049902 |
| 6501009000 | 1.3864 | 0.027728 | 0.061129 |
| 6503009000 | 1.3864 | 0.027728 | 0.061129 |
| 6505903090 | 0.8838 | 0.017677 | 0.038970 |
| 6505904090 | 0.8658 | 0.017316 | 0.038174 |
| 6505906040 | 0.4621 | 0.009242 | 0.020375 |

**§ 1280.313 Collecting persons for purposes of collection of assessments.**

Collecting person for the purposes of collecting the assessment shall be:

(a) A collecting person shall be any person who is responsible for collecting an assessment pursuant to the Act and this subpart, including processors and any other persons that are required to remit assessments to the Board pursuant to this part, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of

receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder, shall pass the collected assessments on to the subsequent purchaser pursuant to the Act and the Order.

(b) Customs will collect the assessment at the time of importation from the importer or from any person acting as the principal agent, broker, or consignee for sheep, sheep products, wool, and products containing wool fiber identified by the HTS classification numbers in § 1280.312, except as provided in § 1280.312(d).

(c) In a case where a producer or feeder sells sheep as part of a custom slaughter operation, the producer or feeder shall be the collecting person in the same manner as if the sheep were sold for slaughter.

(d) In the event of a producer's, feeder's, or importer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer, feeder, or importer or the producer's, feeder's, or importer's estate, or the person acting on behalf of creditors, shall be considered the producer, feeder, or importer for the purposes of this section.

**§ 1280.314 Remittance persons for purposes of remitting assessments.**

Remittance persons for the purposes of remitting assessments shall be:

(a) Each processor who makes payment to a producer, feeder, handler, or collecting person for sheep or wool purchased from the producer, feeder, handler, or collecting person shall be a remitting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on sheep or wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor and that processor shall remit the assessment to the Board.

(b) Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established pursuant to § 1280.224(d) under the Order for live sheep or § 1280.225(d) for greasy wool under the Order, and shall remit such assessment the Board.

(c) Each person who exports live sheep or greasy wool shall remit the assessment to the Board on such sheep or greasy wool at the time of export, at the rate established pursuant § 1280.224(d) for live sheep of the Order or § 1280.225(d) for greasy wool.

**§ 1280.315 Remittance of assessments and submission of reports to the National Sheep Promotion, Research, and Information Board.**

Each person responsible for remitting the assessment as described in § 1280.314 shall remit the assessments and a report of assessments to the Board as follows:

(a) Reports. Each collecting person who is responsible for remitting the assessment shall make reports on forms made available or approved by the Board. Such collecting person shall prepare a separate report for each reporting period. Each report shall be mailed together with the applicable assessment amount and shall be mailed to the Board pursuant to § 1280.311(a). Each completed report shall contain the following information as applicable including but not limited to:

(1) Live sheep sold.

(i) The number of sheep purchased, initially transferred, or that is subject to the collection of assessment in any other manner, and the dates of such transactions;

(ii) The number of sheep exported, or the equivalent thereof of sheep products imported;

(iii) The amount of assessment remitted;

(iv) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(v) The date an assessment was paid.

(2) Greasy wool sold.

(i) The amount of wool purchased, initially transferred or which, in an other manner, is subject to the collection of assessment, and the dates of such transaction;

(ii) The amount of wool exported or the equivalent thereof of wool products;

(iii) The amount of assessment remitted;

(iv) An explanation for the remittance of an assessment that is less than the pounds of wool multiplied by the assessment rate; and

(v) The date an assessment was paid.

(b) Customs will transmit reports and assessments collected on imported sheep and sheep products to AMS according to an agreement between Customs and AMS.

(c) If the Board is not established by the date the first assessments are due, remitters shall remit assessments to the address specified by the Secretary pursuant to § 1280.230(d) of the Order. The Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall transfer such assessments and any interest earned to the Board when it is formed.

**§ 1280.316 Evidence of payment of assessments.**

Each collecting person responsible for remitting an assessment to the Board, except a producer or feeder processing sheep or sheep products of the producer's or feeder's own production for sale is required to give the producer, feeder, handler, or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments. Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person;

(b) Name of producer or feeder who paid the assessment;

(c) Number of head of sheep sold;

(d) Total pounds of sheep or greasy wool sold;

(e) Total assessments paid by the producer or feeder; and

(f) Date an assessment was paid.

**§ 1280.317 Books and records.**

Any person subject to the collection and remittance provisions of the Act and the Order shall maintain and make available to the Secretary for at least 2 years beyond the fiscal period of their applicability such books and records as necessary to carry out the provision of the Order and these regulations. Reporting forms shall be submitted monthly. Domestic producers and feeders as well as importers will be required to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the proposed Order and this proposed rule.

**§ 1280.318 OMB control numbers.**

The control number assigned to the information collection requirements by OMB pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511 is OMB number 0581–0093.

Dated: September 28, 1995.

Lon Hatamiya,

*Administrator.*

[FR Doc. 95–24595 Filed 10–2–95; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 95–ACE–09]**

## Proposed Amendment to Class E Airspace; Council Bluffs, IA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Council Bluffs, IA. The 6-mile radius area will be increased to a 6.3-mile radius area. The development of a new Standard Instrument Approach Procedure (SIAP) at Council Bluffs Municipal Airport based on the Global Positioning System has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Council Bluffs, IA.

**DATES:** Comments must be received on or before November 15, 1995.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–09, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–09.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 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 a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Council Bluffs Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from airport 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. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9C, par. 6005, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed 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).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (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. 106(g) 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400,9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ACE NE E5 Omaha, Eppley Airfield, NE

Omaha, Eppley Airfield, NE
(lat. 41°18′08″ N., long. 95°53′37″ W)
Offut AFB, NE
(lat. 41°07′06″ N., long. 95°54′45″ W)
Council Bluffs Municipal Airport, IA
(lat. 41°15′32″ W., long. 95°45′35″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Eppley Airfield and within 4.3 miles each side of the Eppley Airfield ILS localizer course to Runway 32L extending from the 6-mile radius to 13 miles southeast of the airport and within 4 miles northeast and 6 miles southwest of the Eppley Airfield ILS localizer course to Runway 14R extending

from the 6-mile radius to 15.3 miles northwest of the airport and within a 6-mile radius of the Offutt AFB and within 4.3 miles each side of the Offutt ILS localizer course extending from the 6-mile radius to 7.4 miles southeast of the AFB and within a 6.3 mile radius of Council Bluffs Municipal Airport excluding that portion which lies within the Eppley Airfield and the Offutt AFB Class E5 airspace.

* * * * *

Issued in Kansas City, MO, on September 11, 1995.

Herman J. Lyons, Jr.,

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 95–24552 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–13–M**

## INTERNATIONAL TRADE COMMISSION

## 19 CFR Parts 201 and 207

## Notice of Proposed Amendments to Rules of Practice and Procedure

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (the Commission) proposes to amend its Rules of Practice and Procedure concerning antidumping and countervailing duty investigations and reviews in 19 CFR parts 201 and 207. The proposed amendments have two purposes. First, they will conform the Commission's rules, on a permanent basis, to the requirements of the Uruguay Round Agreements Act (URAA). Second, the amendments will improve the effectiveness and efficiency of the Commission's procedures in conducting antidumping and countervailing duty investigations and reviews.

**DATES:** To be assured of consideration, written comments must be received not later than December 18, 1995.

**ADDRESSES:** A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3087, or Vera A. Libeau, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3176. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:**

### Background

The URAA was enacted on December 8, 1994. It contains provisions which, *inter alia,* amend Title VII of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671 *et seq.*), concerning antidumping and countervailing duty investigations and reviews. Enactment of the URAA necessitated that the Commission amend its rules concerning Title VII practice and procedure.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of § 553 of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), which entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and became effective on January 1, 1995. Because it was not possible to complete the § 553 rulemaking procedure prior to the effective date of the new legislation, the Commission adopted interim rules that came into effect at the same time as the URAA. These interim amendments to part 207 of the Commission's Rules of Practice and Procedure were published in the Federal Register on January 3, 1995. 60 FR 18 (Jan. 3, 1995). The Commission additionally requested comment on the interim rules.

As the Commission stated in its January 3, 1995, Federal Register notice, its interim rules were not intended to ''respond to anything more than the exigencies created by the new legislation.'' The notice explained that any final rules that the Commission would adopt could be more comprehensive than the interim rules. Moreover, in the notice the Commission solicited comment on whether more extensive changes to its rules were necessary or desirable. 60 FR at 19–20. Comments were submitted by the Royal Thai Government (''Thailand''), the law firm of Stewart and Stewart (''S&S'') on its own behalf, the law firm of Pepper, Hamilton & Scheetz on behalf of Gouvernement de Quebec (''Quebec''), the law firm of Collier, Shannon, Rill & Scott on behalf of the Specialty Steel Industry of North America (''SSINA''), the law firms of Dewey Ballantine and Skadden, Arps, Slate, Meagher & Flom on behalf of seven U.S. producers of flat-rolled steel (''Flat-Rolled Steel''), and the law firm of Aitken, Irvin & Lewin on behalf of the Pro Trade Group (''Pro Trade''). The nature of these comments, to the extent that they are pertinent to the subjects addressed in this notice of proposed rulemaking, and the Commission's response thereto is provided below in the explanation of the proposed rules.

Both as a result of comments received in response to the notice of interim rulemaking and as a result of the Commission's own independent examination of its procedures in antidumping and countervailing duty investigations and reviews, the Commission is proposing changes to its procedures involving such investigations and reviews. Some of these changes are intended to implement the new requirements of the URAA, while others are intended generally to improve the efficiency and effectiveness of the Commission's investigative procedures.[1 2]

Several of these changes require amendments to the Commission's rules. Accordingly, the Commission is proposing and submitting for public comment amendments to its part 201 and 207 rules. Additionally, the Commission is proposing to issue as final rules all but one of the interim rules that were published in the January 3, 1995, Federal Register notice. As explained below, the Commission has proposed revisions to some of these

[1] Chairman Watson and Commissioner Crawford are optimistic that most proposals contained herein will provide efficiencies as well as improve the process for the private and the public sector. Some proposals have more potential for cost savings than others; some will benefit primarily the private sector, others primarily the Commission. Only one, the proposal to initiate an issues conference, which is designed to improve and focus the investigative process, may create no significant net efficiencies in the process. Chairman Watson and Commissioner Crawford value and will carefully consider all comments on each proposal.

[2] Commissioner Newquist's and Commissioner Bragg's approval of this notice of proposed rulemaking is solely for the administrative purpose of soliciting public comment on the proposed rules herein. Their approval should not be construed as a concurrence with the proposed rules.

While Commissioner Newquist and Commissioner Bragg generally support any effort to reduce costs to and burdens on parties and the Commission, they are concerned that these proposed rules, if adopted, may have the contrary effect, particularly with regard to the parties and other interested persons.

Commissioner Newquist and Commissioner Bragg strongly encourage public comment on these proposed rules, whether in support or opposition.

Finally, Commissioner Newquist and Commissioner Bragg note that Commission staff prepared rough estimates of the costs and benefits of many of the proposed rules herein. These estimates, contained in memo INV-S–109, dated August 14, 1995, is available from the Secretary's office. Commissioner Newquist and Commissioner Bragg welcome public comment on these staff estimates.

rules either in responses to comments received or as a result of its independent examination of investigative procedures. Other aspects of its independent examination, which are also described in this notice, address internal agency procedures which do not require rulemaking to implement.

The Commission has determined that these proposed rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory action for purposes of the EO. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the rules set forth in this notice are not likely to have a significant impact on a substantial number of small business entities.

Petition Requirements

*Sections 207.10 and 207.11*

The Commission is proposing to amend §§ 207.10 and 207.11 concerning the filing and content of antidumping and countervailing duty petitions. Section 207.10 is proposed to be revised to require petitioners to serve the confidential version of the petition on a party representative as soon as a petitioner is notified that that representative has had its application for administrative protective order (APO) granted. Trade practitioners have expressed the concern that party representatives whose APO applications have already been approved do not gain access to business proprietary information (BPI), and especially the confidential version of the petition, quickly enough to prepare for the staff conference and the postconference briefs. The proposed amendment would obligate petitioners to serve the confidential version of the petition more rapidly than under current practice.

Two other changes that have been proposed to § 207.10 are discussed in more detail below. The first modifies a reference to the Commission ''preliminary investigation,'' consistent with the general change in terminology discussed below in the section concerning investigative activity between the Commission preliminary determination and the Department of Commerce (''Commerce'') preliminary determination. The second, which deletes the current requirement that petitioners file entries of appearance in a final investigation, is discussed below in the section concerning entries of appearance.

The Commission also has proposed extensive amendments to § 207.11 concerning the content of antidumping and countervailing duty petitions. The first sentence of the current rule, which requires a petition to be signed and to identify the petitioner and its representatives, will be retained with one grammatical change and will be designated § 207.11(a).

The second sentence of the rule, which requires that a petition allege the elements necessary for imposition of antidumping and countervailing duty rules and contain information reasonably available to the petitioner supporting the allegation, will be designated § 207.11(b)(1). The Commission is proposing that the change made to this portion of § 207.11 as a result of the interim rulemaking—deleting a reference to former section 303—be made permanent.

Paragraph (b)(2) of § 207.11 contains new provisions specifying particular information to be included within petitions to the extent reasonably available to petitioner. These requirements are not currently set forth in either the regulations of the Commission or those of Commerce. Each of the provisions is designed to facilitate the Commission's ability to conduct investigations under sections 703(a) and 733(a) of the Act.

Several of the provisions are designed to facilitate the preparation and dissemination of questionnaires. The requirements that the petition identify the proposed domestic like product(s) and identify each product on which the Commission should seek information in its questionnaires are designed to aid the Commission in preparing questionnaires. The requirements that the petition provide complete listings of both U.S. producers of the proposed domestic like product(s) and U.S. importers of the subject merchandise, including information concerning street addresses, phone numbers, and market shares (which are not currently required under Commerce's regulations) are designed to facilitate prompt dissemination of questionnaires and preparation of mailing lists by the Commission staff. (Commission staff intends to encourage petitioners additionally to provide such information electronically where feasible.) The requirement that the petition include a table providing empirical data on factors pertinent to the condition of the domestic industry during a period of time prior to the filing of the petition, which will encompass three or three and one-half calendar years, is designed to enable the Commission to consult with Commerce as to the accuracy and adequacy of the allegations in the petition concerning material injury by reason of allegedly dumped or subsidized imports.

Other provisions in proposed § 207.11(b)(2) are designed to reduce the amount of data that will be requested in questionnaires. Because information concerning each petitioner's ten largest U.S. customers and lost sales and revenues will now be contained in the petition, the Commission will no longer need to request such information in the questionnaires it sends to petitioners. U.S. producers of the proposed domestic like product who are not petitioners will still be requested to provide lost sales and revenue information in questionnaires.

The Commission emphasizes that, consistent with statutory requirements, petitioners will only be required to provide information that is reasonably available to them. The Commission realizes that, in some instances, petitions are filed on behalf of U.S. industries, such as those producing agricultural products, that contain so many producers that providing a complete listing of U.S. producers would be impossible. In other instances, petitioners may not have access to financial or trade data concerning every domestic producer. The Commission does not intend to require petitioners to provide the types of data specified in proposed § 207.11(b)(2) when such data are not reasonably available to them. Proposed § 207.11(b)(3) does require, however, that when a petitioner is unable to provide a type of information specified in § 207.11(b)(2), it certify that that type of information is not reasonably available to it.

Investigative Activity Between Commission Preliminary Determination and Commerce Preliminary Determination

*Sections 207.12, 207.13, 207.14, 207.18 and 207.20*

Several of the comments filed in response to the January 3, 1995, Federal Register notice endorsed the proposition that the Commission should begin its final antidumping and countervailing duty investigations at an earlier date. S&S suggested that the Commission begin preparation of its questionnaires for use in the final investigation before Commerce issues its preliminary determination, and distribute them shortly after the Commerce preliminary determination is issued. SSINA proposed that draft questionnaires be circulated to the parties two weeks prior to the issuance of the Commerce preliminary determination, and that the questionnaires be issued on the date of

the Commerce preliminary determination. Flat-Rolled Steel indicated that the Commission should institute its final investigation 30 days prior to the date that Commerce is scheduled to issue its preliminary determination. Pro Trade also endorsed the Commission beginning its final investigation before Commerce issued its preliminary determination, early issuance of questionnaires, and establishment of a period at the outset of the final investigation for the parties to identify arguments they intend to raise concerning the appropriate domestic like product(s).

In light of these comments, and as a result of its own internal review of antidumping and countervailing duty procedures, the Commission is proposing major changes in the way it conducts investigative activity between issuance of its preliminary determination and the issuance of the Commerce preliminary determination. Although section 207.18 currently provides the Commission's Director of Operations with the authority to conduct investigative activity during this period, the Commission staff does not ordinarily engage in extensive investigative activity between the time the Commission issues its preliminary determination and the time it institutes its final investigation.

Under the proposed revisions, however, the Commission will continue to engage in investigative activity immediately following its preliminary determination unless that determination is negative or one of negligible imports, in which event the investigation is terminated by operation of law. Therefore, section 207.18 is proposed to be revised to indicate that, if the Commission's preliminary determination is affirmative, it will state in the notice of its determination that it publishes in the Federal Register that it will continue its investigation to reach a final determination under section 705(b) or 735(b). This is in contrast to current practice, in which the Commission does not ordinarily institute a ''final investigation'' until it receives notice of a preliminary affirmative determination by Commerce. (Other proposed changes to section 207.18 delete a reference to former section 303, make clear that the investigation will terminate in the event of a preliminary determination of negligible imports, as well as in the event of a negative preliminary determination, and delete the last three sentences of the rule, which are superseded by proposed §§ 207.20 and 207.21.)

Because the Commission will be conducting a continuous investigation, it proposes amending its regulations so that they no longer refer to discrete ''preliminary'' and ''final'' investigations. Of course, the Commission will continue to render discrete preliminary and final determinations, as required by statute. The portion of the investigation made in connection with the preliminary determination will be known as the ''preliminary phase'' of the Commission investigation, and the portion of the investigation made in connection with the final determination will be known as the ''final phase'' of the Commission investigation. The Commission has proposed wording changes in §§ 207.12, 207.13, and 207.14 to reflect this. (Sections 207.12 and 207.14 will also be revised to delete references to former section 303 of the Act.)

The nature of the investigative activity that the Commission will conduct between the time it issues its preliminary determination and the time that Commerce issues its preliminary determination is specified in proposed § 207.20. (As explained further below, current section 207.20 will be renumbered § 207.21 and the succeeding sections will be renumbered accordingly.) Under proposed § 207.20(a), the Director of Operations will publish in the Federal Register a schedule of investigative activities that will take place under § 207.20 between the time of the Commission preliminary determination and the time of the Commerce preliminary determination. The remaining portions of proposed § 207.20 identify the three major aspects of this investigative activity.

First, under proposed § 207.20(b), the Director of Operations will circulate to the parties draft questionnaires for the phase that the Commission will conduct in connection with its final determination no later than 14 days after the Commission transmits its opinion(s) in connection with its preliminary determination to Commerce pursuant to section 703(f) or 733(f) of the Act. Although the Commission investigative staff currently circulates draft final questionnaires to the parties for comment, the proposed regulation will formalize this process and move it to an earlier point in the investigation.

Second, under proposed § 207.20(c), the parties will file an issues brief with the Commission at the date specified in the Federal Register notice, which is to be no later than 28 days before the date on which Commerce is scheduled to issue its preliminary determination. (The Commission solicits comment on whether the filing of this brief should instead be scheduled in relation to the time that the Commission transmits its preliminary determination opinion(s) to Commerce, i.e., that the brief must be filed no later than 75 days after transmission of the Commission preliminary opinion(s).) Although the issues brief should contain comments on the draft questionnaires, the Commission envisions this brief as being considerably more thorough than the informal comments that parties currently file addressing draft questionnaires. In the proposed issues brief parties would state their position on certain threshold issues (e.g., domestic like product, domestic industry, cumulation, negligible imports) and additionally identify all issues on which they maintain that the Commission should collect data through the questionnaire process and provide a supporting rationale indicating why such data are necessary to the investigation. The brief should also identify any known sources of information that the Commission should consult in connection with such issues. For example, if a party intends to argue that the Commission should designate multiple domestic like products, or domestic like products that differ from those designated by the Commission in its preliminary determination, it will be required in its issues brief to identify each domestic like product on which the Commission should collect data, and to provide the legal and factual basis for its position that such domestic like product(s) should be designated.

Requests for data collection that are not made in the issues brief may not be raised subsequently by parties in the investigation. To continue the example above, a party that does not request in its issues brief that the Commission should designate multiple domestic like products and seek information concerning each proposed domestic like product in questionnaires may not assert such a request for the first time after the Commission has issued its questionnaires. The reason for this provision is to ensure that the Commission receives data collection requests from parties early enough in an investigation to accord it sufficient time to collect data concerning those requests it deems appropriate. Particularly in light of the new responsibilities the URAA imposes on the Commission to disclose all information to parties before the record closes prior to issuance of a final determination, Commission staff will generally not have sufficient time to generate data when a party does not assert an argument relating to or implicating data collection for the first

time until a late stage of the investigation such as at the hearing or in a prehearing brief.

Third, under proposed § 207.20(c)(4), within five business days of the filing of issues briefs, the Director of Operations will conduct a conference concerning the issues raised in the brief. The purpose of the conference is to provide a vehicle for the parties to identify and discuss, and where possible, agree on threshold issues, such as domestic like product, domestic industry, cumulation and negligible imports. The conference also should help identify issues that may need more specific or different data collection than that contemplated in the draft questionnaires. The Commission will retain authority to resolve all threshold and data collection issues. These matters, of course, will not be formally resolved by the Commission at the time of the conference. However, the Commission will give full consideration to the outcome of the conference and, to the extent practicable, provide guidance to the parties to permit them to focus their attention and resources on the significant issues outstanding in the investigation.

The Commission anticipates that the new procedures proposed in § 207.20 will permit it to mail questionnaires within a week of issuance of an affirmative preliminary dumping or subsidy determination by Commerce. In investigations in which Commerce's preliminary determination modifies the scope of the investigation from that stated in its notice of initiation, the date of mailing may be delayed.

Notice of Scheduling of Final Phase Investigation

*§§ 201.13 and Renumbered §§ 207.21, 207.23, 207.24, 207.25, and 207.29*

As previously stated, under the Commission's ''continuous investigation'' proposal, the Commission will institute its final phase investigation at the same time it publishes notice of its preliminary determination. Neither the Commission's notice of institution nor the Director of Operation's scheduling notice under proposed § 207.20(a) will be able to contain a complete schedule of activities for the final phase investigation. The Commission will not be able to schedule dates for all activities until it is aware of the date on which its final determination is due. It will not know this date, however, before Commerce issues its preliminary determination.

Accordingly, the Commission is proposing to revise and retitle current § 207.20, which is to be renumbered § 207.21. (Because the Commission is proposing issuance of a new § 207.20, current §§ 207.20 through 207.29 will be renumbered §§ 207.21 through 207.30, respectively). Under the revised rule, upon receipt of an affirmative preliminary determination from Commerce, the Commission will issue a Final Phase Notice of Scheduling. This notice will contain scheduling information equivalent to that provided by the notice of institution of a final investigation currently issued under § 207.20(b). The Commission is proposing to amend proposed renumbered §§ 207.23 and 207.25 (corresponding respectively to current §§ 207.22 and 207.24) to reference this notice of scheduling in lieu of the current references to the notice of institution. (An additional amendment proposed for renumbered § 207.23 with respect to page limits is discussed separately below.)

Proposed § 207.21(c) carries forward two provisions in the current rules. The first, which now appears in § 207.18, authorizes the Director of Operations to continue investigative activity as appropriate should Commerce issue a negative preliminary determination. The second carries forward a provision currently in § 207.20(b) indicating that the Commission investigation shall be terminated if Commerce should make a negative final determination.

Additionally, the Commission is proposing amendments to renumbered §§ 207.21, 207.24, and 207.29 (corresponding respectively to current §§ 207.20, 207.23, and 207.28) to delete references to former § 303 of the Act. Further amendments are proposed to § 201.13(m) and to renumbered § 207.24 to change cross-references to other renumbered sections.

Single Entry of Appearance

*Sections 201.11 and 207.10*

To implement its ''continuous investigation'' proposal, the Commission is proposing to amend § 201.11(b) governing the filing of notices of appearance in antidumping and countervailing duty investigations. Under proposed § 201.11(b)(2), a party that files a timely notice of appearance during the preliminary phase of an investigation need not file any further notices of appearance before the Commission in that antidumping or countervailing duty investigation. A corresponding change is proposed to § 207.10(a) to eliminate the requirement that petitioners file an entry of appearance during the final phase of an investigation.

Additionally, under proposed § 201.11(b)(4) a party will still be able to file a notice of appearance as late as 21 days after publication in the Federal Register of the Final Phase Notice of Scheduling. Nevertheless, a party that does not enter an appearance within 60 days after issuance of the Commission's notice of Preliminary Determination will be precluded by proposed § 207.20(c)(3) from raising issues requiring collection of further data by the Commission subsequently in the investigation.

Page Limits

*Renumbered Section 207.23*

The current Commission rules impose page limits on postconference briefs and posthearing briefs. Interim rule § 207.29(b) promulgated on January 3, 1995, imposes page limits for final comments on factual information. Additionally, proposed § 207.20(c)(3) would impose a 50-page limit on issues briefs.

The one brief that is not currently subject to page limits in Commission antidumping and countervailing duty investigations is the prehearing brief.

The Commission proposes that renumbered § 207.23 (corresponding to current § 207.22) be amended to impose a 50-page limit on prehearing briefs. The 50-page limit would encompass all textual material, including attachments that contain textual material. The page limit would not apply to nontextual material in briefs (such as a table of contents) or exhibits (such as an illustration of a product). The Commission's objective in proposing a page limit is to encourage parties to present arguments concisely, and to limit argument to those issues central to a case. The Commission believes that the new issues brief to be submitted pursuant to proposed § 207.20(c)(3) will reduce the number of arguments—particularly pertaining to domestic like product—that must be presented in the prehearing brief and consequently will permit such briefs to be much shorter. The Commission also desires to discourage parties from submitting lengthy attachments to briefs that merely reiterate the arguments presented in the main brief.

The Commission invites commenters to address whether its proposed amendment to renumbered § 207.23 will accomplish these objectives while permitting parties ample opportunity to present evidence and argument to the Commission. Commenters may further address whether they believe that page limits for prehearing briefs should be established at a level different from the

50-page limit proposed, or whether the Commission should continue not to impose page limits on prehearing briefs. The Commission also solicits comments on whether practitioners perceive the existing 50-page limit on postconference briefs and the proposed 50-page limit on issues briefs to be helpful and/or useful, whether these limits should be modified or eliminated, and whether elimination of the page limit on postconference briefs would be likely materially to change the length and/or nature of the briefs filed with the Commission.

The Commission is also proposing to amend the page limit contained in current interim rule § 207.29(b). This is described further below in the section addressing proposed renumbered § 207.30.

Final Comments

*Renumbered Section 207.30*

In the January 3, 1995, interim rulemaking notice, the Commission promulgated interim rule § 207.29, a new provision implementing § 782(g) of the Act, which was added to the Act by the URAA. Section 782(g) requires that the Commission, before making a final determination in antidumping or countervailing duty investigations or review proceedings, cease collecting information and provide parties to the proceeding with a final opportunity to comment upon all information on which they had not previously had an opportunity to comment. The rule states that the Commission will specify a date in final antidumping and countervailing duty investigations after the filing of posthearing briefs on which it will make available to all parties to the investigation all information on which parties have not had an opportunity to comment. It further states that the parties will be accorded an opportunity to comment on this information, that any comments can concern only such information, and that comments may not exceed 10 double-spaced pages.

After consideration of the comments on the interim rule, the Commission has decided to propose issuance of interim rule § 207.29 as a final rule, to be renumbered § 207.30, with two substantive changes. The first change simply clarifies that the ''24-hour rule'' governing final bracketing of BPI pertains to comments filed under rule 207.30. The second change pertains to the page limits on the comments to be submitted under § 207.30(b). Additionally, the cross-references in the rule to other provisions that have been renumbered will be revised.

Comments on the interim rule focused on three areas. First, several commenters addressed the type of material that they believe the Commission should release in the disclosure process required by interim rule § 207.29(a). Pro Trade, SSINA, Quebec and S&S all asserted that final versions of the staff report, the economic memorandum, and other non-privileged memoranda that staff prepare for the Commission or individual Commissioners should be released to the parties.

The Commission currently contemplates that a final version of the staff report, which will incorporate material that is currently presented in other non-privileged staff memoranda such as the economics memorandum and the financial memorandum on variance analysis, will be released to the parties under APO approximately five days before final comments under subsection (b) of the interim rule will be due, which will be approximately four days before the Commission's public briefing and vote. (The Commission is also continuing to explore release of a public version of the staff report prior to the time that final comments are due, as sought by S&S and SSINA. The Commission does not contemplate that this will be feasible in all investigations, however, depending on unresolved issues of data confidentiality.) Although the five-day period is shorter than that requested by commenters Quebec and SSINA, the Commission believes that earlier release of the staff report will not provide it sufficient time to investigate information obtained at the hearing, and that establishing the deadline for comments at a later time would not provide it sufficient time to analyze the comments and the record prior to the vote or to prepare its determination. Moreover, the Commission does not believe that promulgating regulations requiring release of the staff report to the parties at a specific point in the investigation is appropriate or necessary, particularly before it has developed experience in implementing the requirements of section 782(g) of the Act.

Several comments also responded to the inquiry posed by the Commission in the preamble to its January 3, 1995, interim rulemaking notice as to whether the Commission should adopt a procedure for multiple-stage comments. Those commenters who addressed the issue—Pro Trade, SSINA, and S&S—uniformly opposed such a procedure. The Commission agrees that there is insufficient time in antidumping and countervailing duty investigations for a multiple-stage comment process. The proposed rule consequently retains the single-stage comment procedure of the current interim rule.

The third area addressed by commenters concerns the 10-page limit for final comments specified in interim rule § 207.29(b). Flat-Rolled Steel contended that this limit was too restrictive and should be set at 25 pages; SSINA proposed that all respondents be required to submit a single joint brief of the same length as the petitioner's. The Commission does not believe that SSINA's proposal is workable in light of the short deadlines involved.

In response to Flat-Rolled Steel's comment, the Commission emphasizes that the final comments will be very limited in scope. The Commission intends to release factual information under APO very promptly after receipt. (It does not agree with Flat-Rolled Steel, however, that the timing of APO releases is an appropriate subject for rulemaking.) Consequently, the Commission anticipates that the parties will receive a limited amount of new factual information subsequent to filing of the posthearing brief which may be discussed in the final comments. The Commission therefore contemplates that such comments will be quite concise. Nevertheless, the Commission is concerned that the 10-page limit established in the interim rule may be too restrictive. It is therefore proposing that this page limit be set at 15 pages.

Proprietary Information

*Sections 201.6 and 207.7*

The Commission is proposing amendments to some of its regulations pertaining to submission and disclosure of proprietary information. Section 201.6 is proposed to be revised expressly to allow parties and the Commission publicly to discuss confidential statistics in nonquantitative characterizations unless the submitter provides good cause for confidential treatment of such characterizations. In particular, the revision would permit the discussion of trends in such statistics, e.g., whether the difference between two confidential figures shows an increase or a decrease. This revision would apply only to confidential business information (CBI) and BPI submitted in numerical form; textual CBI and BPI would not be disclosed in any form. Moreover, if the submitter makes a claim for confidential treatment of trend information, such information must be treated as confidential until or unless the Secretary rejects the claim of confidentiality pursuant to section 201.6.

The proposed revision would address a concern expressed by practitioners

that the Commission's definition of CBI and BPI may overly restrict use of such information. The Commission requests comment concerning the practical effects of the proposed revision in circumstances where some but not all firms request that their trend data be kept confidential.

The Commission is additionally proposing to revise the procedure in § 201.6(f) for filing and handling appeals from approval by the Secretary of requests for confidential treatment. Section 201.6(f) as currently in effect requires that an appeal must comply with certain rules applicable to requests under the Freedom of Information Act (FOIA). This connection with the FOIA rules creates an unnecessary step, inasmuch as the Secretary has already acted upon the matter. The proposed amendment to § 201.6(f) would establish a procedure for appeals from approvals of requests for confidential treatment that essentially parallels the procedure now specified in § 201.6(e) for appeals from denials of such requests.

Another proposed revision to section 201.6 would use the term ''nondisclosable confidential business information'' to describe BPI not subject to disclosure under APO pursuant to section 777(c)(1)(A) of the Act. Corresponding revisions to § 207.7(a)(1), (f)(2), and (g) would clarify the procedure for submitting such information.

Another proposed change to § 207.7 relates to the proposed amendment to § 201.11 discussed above. Section 207.7(a)(2) currently states that, when an APO application has been approved with respect to applicants representing an interested party, additional applicants representing that party may file applications after the deadline for entries of appearance but no later than five days before the deadline for filing posthearing briefs in the investigation, or before the deadline for filing briefs in a preliminary investigation. The purpose of the five day deadline(s) is to finalize service lists before interested parties must file and serve their briefs. Accordingly, the proposed amendment to § 207.7(a)(2) indicates that APO applications for additional applicants must also be filed no later than five days before the deadline for filing issues briefs pursuant to proposed rule § 207.20(c)(3). Additionally, § 207.7(b)(2) and (b)(4) will be amended to refer to ''the preliminary phase of an investigation'' in lieu of ''preliminary investigation.''

''24-Hour'' Rule

*Section 207.3*

The Commission is proposing to amend the ''24-hour'' rule governing final bracketing of BPI, to clarify absolutely that the only changes that may be made in the 24-hour BPI version of documents are changes in bracketing and deletion of BPI. Any other changes, including typographical changes, are not allowed unless the Commission grants an extension of time to file an amended document pursuant to rule § 201.14(b)(2). In several instances, parties have made changes other than those affecting bracketing and deletion of BPI in the briefs filed under this rule, in some instances triggering an investigation into whether there was a violation of the 24-hour rule. The proposed amended language to § 207.3(c) is intended to obviate similar misinterpretations of the rule. An additional amendment is proposed to § 207.3(b) to revise a cross-reference to a renumbered regulation.

Opportunity for Nonparty Participation

*Section 207.9*

The URAA added a new section 777(h) to the Act, which requires the Commission to provide an opportunity for industrial users of subject merchandise, and, if the merchandise is sold at the retail level, representative consumer organizations, to submit relevant information concerning material injury by reason of subject imports. The Commission is proposing to add a new § 207.9 to the Commission rules to implement the requirement of section 777(h) that industrial users and consumer organizations be provided an opportunity to participate in Commission antidumping and countervailing duty investigations. Proposed § 207.9, like section 777(h), does not, however, confer interested party status on industrial users and consumer organizations. Unless such entities qualify as interested parties under section 771(9) of the Act, they do not have the rights that the Act and the Commission rules afford to interested parties.

Other Conforming Changes

*Sections 207.1, 207.2, 207.8, and 207.40*

In its January 3, 1995, notice of interim rulemaking, the Commission made amendments to §§ 207.1, 207.2(e), 207.8, 207.10, 207.11, and 207.40 to conform these provisions with the URAA. The only one of these amendments which was the subject of comment was the amendment to section 207.8, which states that the Commission may use ''facts otherwise available'' whenever any party or any other person fails to respond adequately to a subpoena or refuses or is unable to produce information in a timely manner and in the form required, or otherwise significantly impedes an investigation. Pro Trade suggested the Commission amend the regulation to limit the instances in which the Commission would use ''facts otherwise available.'' The Commission believes, however, that the interim regulation conforms to the statute as drafted.

Accordingly, the Commission proposes issuance in final form of §§ 207.1, 207.2(e), 207.8, and 207.40, as these provisions were amended in the January 3, 1995, notice of interim rulemaking. As discussed above, the Commission has proposed further amendments to sections 207.10 and 207.11.

In the January 3, 1995, notice of interim rulemaking, the Commission additionally promulgated a new § 207.46 for investigations under section 753 of the Act. Several comments concerning this interim rule address matters which also implicate the type of procedures the Commission should establish for ''sunset'' reviews under section 751(c) of the Act. The instant rulemaking has focused primarily on implementing changes to procedures in final Commission antidumping and countervailing duty investigations required by the URAA, and the Commission is not prepared to address the question of ''sunset'' reviews at this time. Consequently, the Commission is not proposing in the instant rulemaking proceeding to issue § 207.46 in final form. Section 207.46 will remain in effect as an interim rule.

Comments

The Commission solicits comments on the proposed amendments to its part 201 and 207 rules, as well as the proposed changes to its internal procedures concerning antidumping and countervailing duty investigations described above. Such comments should be filed within 75 days of publication of this notice in the Federal Register.

The Commission also solicits comments on several proposed changes to its procedures in antidumping and countervailing duty investigations that it is contemplating which do not require, and are not related to, changes in the Commission's rules. The Commission is particularly interested in commenters' views concerning whether the proposals serve the objectives of: (1) promoting transparency; (2) promoting consistent, well-supported and legally

defensible determinations; (3) minimizing burdens to all participants; and (4) minimizing cost of process to the Commission. These changes are as follows:

1. Preliminary phase investigation conferences. As in hearings held in conjunction with final phase investigations, allow questioning by opposing parties; the time spent on questions (but not responses) and rebuttal/closing statements would come out of overall time allocations.

2. Questionnaires. Adopt a new format for and revise the basic content of Commission questionnaires to reduce respondent burden and better tailor questions to investigative issues. Copies of the proposed new generic producer, importer, and purchaser questionnaires may be obtained for comment from the Commission's Office of Investigations (202–205–3160). Representative of the changes being proposed, the new producer questionnaire is about half the length of the current one and incorporates the following changes:

a. The questionnaire would be in two parts, the first consisting of general instructions/definitions, and the second consisting of the data requests (a transmittal letter, a ''fact sheet'' on Title VII investigations, and the Commission's institution notice would also accompany each questionnaire);

b. Questions on capacity, production, shipments, inventories, channels of distribution, and employment are combined onto one page;

c. Current questions seeking employment and financial data on overall establishment operations are eliminated (certain overall establishment financial data requests may be added if deemed necessary by the Commission, or if respondents are unable to provide product-line data);

d. Only the total quantity and value of sales are requested for questions seeking pricing data for particular products, as opposed to that information plus largest sale value, quantity, and shipping costs in current questionnaires (this proposal initially applies to questionnaires for preliminary phase investigations; it may be appropriate to request more information in final phase investigations if deemed necessary by the Commission); and

e. The current requests for lost sales and revenue allegations are eliminated in questionnaires sent in preliminary phase investigations to petitioners, and eliminated altogether in questionnaires for final phase investigations. As explained above, petitioners would be required to furnish their allegations in the petition, thus allowing the Commission more time to investigate them.

The new producer questionnaire for use in preliminary phase investigations contains provisions for providing certain information to Commerce, on its request, if it has questions concerning domestic industry support for the petition. Questionnaires for final phase investigations would not contain those provisions.

The Commission also solicits comments on other possible changes to questionnaires, such as: (1) requesting only half-year ''interim-period'' data as opposed to the current practice of requesting quarterly interim-period data; (2) electronic transmission, preparation, and submission of questionnaires; (3) a mechanism that would allow firms to not repeat information provided in preliminary questionnaires in final questionnaires if the questions are the same and the information originally provided was correct; and (4) increased use of sampling in developing mailing lists of questionnaire recipients in appropriate circumstances (i.e., agricultural domestic industry with multiple producers).

Finally, the Commission will endeavor to increase coordination and cooperation with the Department of Commerce with respect to data collection, such as exploring the possibility of ''piggy-backing'' on Commerce's questionnaire to collect foreign-industry data directly from the exporting companies investigated by Commerce, and using joint telegrams to U.S. embassies.

3. Briefing. The Commission solicits comments on its proposed plans to reduce by two days the period between the Commission hearing and the submission of posthearing briefs in order to provide the Commission more time to consider these briefs, prior to the closing of the record. In particular, the Commission solicits comments on how significantly this scheduling change will affect the parties' ability to prepare their posthearing briefs, including responding to Commissioners' and Commission staff's questions from the hearing.

4. Reports. Eliminate the separate financial memorandum on variance analysis and incorporate the analysis into staff reports when appropriate.

Eliminate the separate economics memorandum and incorporate the analysis into staff reports.

Release the public version of the staff report to parties at the conclusion of the investigation but publish only the Commission's determination and Commissioners' opinions. Determinations and opinions are currently made available electronically on the Internet. As soon as certain technical problems related to the transmission of graphic presentations are resolved, the Commission would make public versions of reports similarly available.

The Commission also solicits comments on whether or not it is useful to parties and/or the public to include its own and Commerce's Federal Register notices and conference/hearing witness lists in staff reports, and whether the public version of the staff report should continue to be included in its published report.

5. Verification policies. The Commission solicits comments on the following policies related to on-site verification of data received during the course of investigations:

a. General—Verifications will normally be conducted in final phase investigations. In preliminary phase Title VII investigations, no on-site verifications will be attempted except under exceptional circumstances.

b. Questionnaire type—The extent and scope of the on-site verification efforts will focus mainly on producer questionnaire responses, with verifications of importer, purchaser, and foreign producer questionnaire responses as appropriate.

c. Company selection—The guidelines for the selection of companies to be verified is documented in the updated Verification Handbook. The criteria include such factors as inclusion of the petitioner(s), market share, data discrepancies, and submissions from APO parties.

d. Scheduling of the verification—Best efforts will be made to complete producer questionnaire verifications and formally release Verification Reports to APO parties and the Commission prior to the hearing date.

e. Procedures—The verification covers all questionnaire data, including trade, production, employment, pricing, and financial data. The Verification Handbook covers the detailed procedures for the on-site verification of companies.

f. Verification report—A detailed verification report will be prepared after verification. The report, which will be signed and dated, will indicate both the verification procedures utilized as well as the results. Additional information collected at verification may be included in the report. Dating and initialing the Verification Handbook is not necessary, but may be done in verifications involving new Commission auditors.

g. Documentation—The collection of company documents will only be

undertaken when such documents are believed necessary to document contested, complex, or questionable information submitted to the Commission. Supporting documentation will not be obtained solely for the purpose of documenting a data check. All documents obtained at verification will become exhibits to the verification report.

h. Commerce—In cases where Commerce has verified data submitted by an importer which is also the subject of a Commission verification, Commerce's verification report will be reviewed for information that may be useful.

i. Participants—Verifications will be conducted by auditors. Other team members or Commission staffers also may participate.

List of Subjects

*19 CFR Part 201*

Administrative practice and procedure, Investigations, Imports.

*19 CFR Part 207*

Administrative practice and procedure, Antidumping, Countervailing duties, Investigations.

For the reasons stated in the preamble, 19 CFR parts 201 and 207 are proposed to be amended as set forth below:

## PART 201—[AMENDED]

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

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Paragraphs (a), (b), and (f) of § 201.6 are revised to read as follows:

### § 201.6 Confidential business information.

(a) *Definitions.* (1) Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. The term ''confidential business information'' includes ''proprietary information'' within the meaning of § 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). Nonnumerical characterizations of numerical confidential business information (e.g. discussion of trends) will be treated as confidential business information only at the request of the submitter for good cause shown.

(2) Nondisclosable confidential business information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in § 207.7 of this chapter.

(b) *Procedure for submitting business information in confidence.* (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential business information, under paragraph (a) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document:

(A) Clearly marked on its cover as to the pages on which confidential information can be found;

(B) With information for which confidential treatment is requested clearly identified by means of brackets; and

(C) With information for which nondisclosable confidential treatment is requested clearly identified by means of double brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by § 201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

* * * * *

(f) *Appeals from approval of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from an approval by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, shall show that a copy thereof has been served upon the submitter, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of the approval by the Secretary of a request for confidential treatment or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice, in writing with the reasons therefor, has been provided the person making the appeal.

* * * * *

3. Paragraph (b) of § 201.11 is revised to read as follows:

### § 201.11 Appearance in an investigation as a party

* * * * *

(b) *Time for filing.* (1) Except in the case of investigations conducted under part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the Federal Register.

(2) In the case of investigations conducted under Subpart B of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not

later than seven (7) days after publication of the Commission's notice of investigation in the Federal Register. A party that files a notice of appearance during such time need not file an additional notice of appearance during the investigation conducted under subpart C of part 207 of this chapter.

(3) In the case of investigations conducted under subpart C of part 207 of this chapter, a party may file an entry of appearance within sixty (60) days of issuance of the notice of preliminary determination in the Federal Register. A party that does not file a notice of appearance by such time will be precluded pursuant to § 207.20(c)(3) from raising issues requiring collection of further data by the Commission subsequently in the investigation.

(4) Notwithstanding paragraphs (b)(2) and (b)(3) of this section, a party may file an entry of appearance in the investigation conducted under subpart C of part 207 of this chapter during the twenty-one (21) days following publication in the Federal Register of the Final Phase Notice of Scheduling described in § 207.21 of this chapter.

* * * * *

4. Paragraph (m) of § 201.13 is revised to read as follows:

**§ 201.13 Conduct of nonadjudicative hearings.**

* * * * *

(m) *Closed sessions.* (1) Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing (or three (3) days prior to the date of a conference conducted under § 207.15 of this chapter) that:

(i) Identifies the subjects to be discussed;

(ii) Specifies the amount of time requested; and

(iii) Justifies the need for a closed session with respect to each subject to be discussed, the Commission (or the Director, as defined in § 207.2(c) of this chapter, for a conference under § 207.15 of this chapter) may close a portion of a hearing (or conference under § 207.15 of this chapter) held in any investigation in order to allow such party to address confidential business information, as defined in § 201.6, during the course of its presentation.

(2) In addition, during each hearing held in an investigation conducted under § 202 of the Trade Act, as amended, or in an investigation under title VII of the Tariff Act as provided in § 207.24 of this chapter, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing in order to allow Commissioners to question parties and/or their representatives concerning matters involving confidential business information.

## PART 207—[AMENDED]

5. The authority citation for part 207 is revised to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

6. Paragraphs (b) and (c) of § 207.3 are revised to read as follows:

**§ 207.3 Service, filing, and certification of documents.**

* * * * *

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.23, 207.24, and 207.25 shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including § 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes business proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. The business proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: ''Bracketing of BPI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information, including typographical changes, are permitted after the deadline unless an extension of time is granted to file an amended document pursuant to section 201.14(b)(2). Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

7. Paragraphs (a), (f)(2), (f)(3), and (g) of § 207.7 are revised to read as follows:

**§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.**

(a) (1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.*, all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except nondisclosable confidential business information) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''business proprietary information'' has the same meaning as the term ''confidential business information'' as defined in § 201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a

form adopted by the Secretary or a photocopy thereof. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five (5) days before the deadline for filing posthearing briefs in the investigation, the deadline for filing the brief required by § 207.20(c), or the deadline for filing briefs in the preliminary phase of an investigation, and shall not be served with business proprietary information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in ''competitive decisionmaking'' includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in the preliminary phase of an investigation, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information, or ten (10) days in the preliminary phase of an investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under § 777(c)(2) of the Act.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute business proprietary information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release business proprietary information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(iv) An authorized applicant granted access to business proprietary information in the preliminary phase of an investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final phase of that investigation, provided that the authorized applicant has not lost his authorized applicant status (e.g., by terminating his representation of an interested party who is a party). When retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final phase of the investigation, but shall list in a submission to the Commission in the final phase of the investigation the authorized applicants in the same firm and the persons employed or supervised by the authorized applicant who continue to participate in the investigation.

* * * * *

(f) *Service.* * * *

(2) If a party's request under paragraph (g) of this section is granted, the Secretary shall accept the information exempt from disclosure into the record. The party shall serve the submission containing such information in accordance with the requirements of § 207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be dealt with as required by § 207.3(c).

(g) *Exemption from disclosure.* (1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10 of this chapter, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information as defined in § 201.6(a)(2) of this chapter. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only

be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all business proprietary information, bracketed in accordance with §§ 201.6 and 207.3 of this chapter. The other two versions shall conform to and be filed in accordance with the requirements of §§ 201.6 and 207.3 of this chapter, except that the specific information as to which exemption from disclosure was granted shall be redacted from the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. The requester may file the submission in question without that information, in accordance with the requirements of § 207.3.

8. A new § 207.9 is added to subpart A to read as follows:

**§ 207.9 Opportunity for nonparty participation.**

In any investigation conducted under this part, the Commission shall provide an opportunity for industrial users, and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the Commission concerning material injury by reason of dumped or subsidized imports. Each notice published in the Federal Register in connection with an investigation conducted under this Part shall include a statement informing industrial users and consumer organizations of the opportunity to participate in the investigation.

9. Section 207.12 is revised to read as follows:

**§ 207.12 Notice of preliminary phase of investigation.**

Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or section 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute an investigation and commence the preliminary phase of the investigation under section 703(a) or section 733(a) of the Act and shall publish a notice to that effect in the Federal Register.

10. Section 207.13 is revised to read as follows:

**§ 207.13 Cooperation with administering authority; preliminary phase of investigation.**

Subsequent to institution of an investigation pursuant to § 207.12, the Director shall conduct such investigation as he deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition. Notwithstanding §§ 201.11(c) and 201.14(b) of this chapter, late filings in the preliminary phase of an investigation shall be referred to the Director, who shall determine whether to accept such filing for good cause shown by the person making the filing.

11. Section 207.14 is revised to read as follows:

**§ 207.14 Negative petition determination.**

Upon receipt by the Commission of notice from the administering authority under section 702(d) or section 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or section 732(c)(3) of the Act, the investigation begun pursuant to § 207.12 shall terminate. The Director shall notify all persons who have received requests for information from him of the termination.

12. Section 207.18 is revised to read as follows:

**§ 207.18 Notice of preliminary determination.**

Whenever the Commission makes a preliminary determination, the Secretary shall serve copies of the determination and a public version of the staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the Federal Register. If the Commission's determination is negative, or that imports are negligible, the investigation shall be terminated. If the Commission's determination is affirmative, the notice shall announce commencement of the final phase of the investigation.

13. Sections 207.20 through 207.29 are redesignated as follows:

| Old section | New section |
|---|---|
| 207.20 | 207.21 |
| 207.21 | 207.22 |
| 207.22 | 207.23 |
| 207.23 | 207.24 |
| 207.24 | 207.25 |
| 207.25 | 207.26 |
| 207.26 | 207.27 |
| 207.27 | 207.28 |
| 207.28 | 207.29 |
| 207.29 | 207.30 |

14. A new § 207.20 is added to read as follows:

**§ 207.20 Investigative activity following preliminary determination.**

(a) If the Commission's preliminary determination is affirmative, the Director shall continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or section 733(b) of the Act. The Director shall publish in the Federal Register a schedule for the investigative activities to be conducted pursuant to this section.

(b) The Director shall serve on each party who is a party to the investigation draft questionnaires for use in any final phase Commission investigation no later than 14 days after the date on which the Commission transmits the facts and conclusions on which its preliminary determination is based to the administering authority pursuant to section 703(f) or section 733(f) of the Act.

(c) Each party who is a party to the investigation shall submit to the Commission on a date to be specified in the schedule to be published pursuant to paragraph (a) of this section, which shall be no later than 28 days before the date on which the administering authority is scheduled to issue its preliminary determination in the investigation, a brief including the following:

(1) Comments on the draft questionnaire circulated pursuant to paragraph (b) of this section;

(2) Identification of the party's position on the issues in the investigation;

(3) Identification of issues on which data collection through questionnaires is requested. The brief shall include a supporting rationale for those issues, and shall identify any known sources of information that Commission staff should consult in connection with such issues. A party will not be permitted to raise subsequently in the investigation arguments concerning data collection not identified in the brief. The brief shall not exceed fifty (50) pages of textual material, double spaced and

single-sided, on stationery measuring 8½x11 inches; and

(4) Within five (5) business days of the filing of the briefs referred to in paragraph (c)(3) of this section, the Director shall hold a conference concerning the issues raised in the briefs.

15. Redesignated § 207.21 is revised to read as follows:

**§ 207.21 Final Phase Notice of Scheduling**

(a) Notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act and notice from the administering authority of an affirmative final determination under section 705(a) or section 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the Federal Register, whichever shall first occur.

(b) Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act or, if the administering authority's preliminary determination is negative, notice of an affirmative final determination under section 705(a) or section 735(a) of the Act, the Commission shall publish in the Federal Register a Final Phase Notice of Scheduling.

(c) If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 705(a) or section 735(a) of the Act. Upon receipt by the Commission of notice from the administering authority of its final negative determination under section 705(a) or section 735(a) of the Act, the corresponding Commission investigation shall be terminated.

16. Redesignated § 207.23 is revised to read as follows:

**§ 207.23 Prehearing brief.**

Each party who is an interested party shall submit to the Commission, no later than four (4) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed, shall include a table of contents, and shall not exceed fifty (50) pages of textual material, double spaced and single-sided, on stationery measuring 8½×11 inches. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified for filing of prehearing briefs.

17. Redesignated § 207.25 is revised to read as follows:

**§ 207.25 Posthearing briefs.**

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8½×11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

18. Redesignated § 207.29 is revised to read as follows:

**§ 207.29 Publication of notice of determination.**

Whenever the Commission makes a final determination, the Secretary shall serve copies of the determination and the nonbusiness proprietary version of the final staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the Federal Register.

19. Except for § 207.46, the interim rules amending part 207 published in the Federal Register issue of January 3, 1995 at 60 FR 18 are proposed to be adopted as final, with the following changes:

a. Section 207.10 is revised to read as follows:

**§ 207.10 Filing of petition with the Commission.**

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the preliminary phase of the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

(b) *Service of the petition.* (1) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), he or she approves an application under § 207.7(a). When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with § 207.3(b) within two (2) calendar days. The petitioner shall serve persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) (not already served) within two (2) calendar days of the establishment of the Secretary's list. Service shall be attested by a certificate of service as required in § 201.16(c)(2) of this chapter.

(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.

(c) *Amendments and withdrawals; critical circumstances.* (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 703 or section 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

b. Section 207.11 is revised to read as follows:

**§ 207.11 Contents of petition.**

(a) The petition shall be signed by the petitioner or its duly authorized officer, attorney, or agent, and shall set forth the

name, address, and telephone number of the petitioner and any such officer, attorney, or agent, and the names of all representatives of petitioner who will appear in the investigation.

(b) (1) The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or section 731(a) of the Act and contain information reasonably available to the petitioner supporting the allegations.

(2) The petition shall also include the following specific information, to the extent reasonably available to the petitioner:

(i) Identification of the domestic like product(s) proposed by petitioner.

(ii) A listing of all U.S. producers of the proposed domestic like product(s), including a street address, phone number, contact person(s), and estimated share of U.S. production for each producer.

(iii) A listing of all U.S. importers of the subject merchandise, including street addresses, phone numbers, and estimated share of U.S. imports for each importer.

(iv) A table summarizing the proposed domestic industry's production, domestic shipments, share of domestic consumption, capacity, capacity utilization, inventories, employment levels, operating income, research and development expenses, and capital expenses for the three most recent calendar years preceding the filing of the petition for which data are available. If the most recent calendar year preceding the filing of the petition for which data are available concluded over eight months prior to the filing of the petition, the table should also include data for the first six months of both the calendar year in which the petition was filed and the preceding calendar year.

(v) Identification of each product on which the petitioner requests the Commission to seek pricing information in its questionnaires.

(vi) A listing of each petitioning firm's ten largest U.S. customers for each proposed domestic like product, including a street address, phone number, contact person(s), and share of the petitioning firm's total sales for each customer.

(vii) A listing of all sales or revenues lost by each petitioning firm by reason of the subject merchandise during the three years preceding filing of the petition.

(3) The petition shall contain a certification that each item of information specified in paragraph (b)(2) of this section that the petition does not provide was not reasonably available to the petitioner.

(4) Petitioners are also advised to refer to the administering authority's regulations concerning the contents of petitions.

c. Paragraphs (a), (b), and (c) of redesignated § 207.24 are revised to read as follows:

**§ 207.24 Hearing.**

(a) *In general.* The Commission shall hold a hearing concerning an investigation before making a final determination under section 705(b) or section 735(b) of the Act.

(b) *Procedures.* Any hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding § 201.13(f) of this chapter, in connection with its presentation a party may file witness testimony with the Secretary no later than three (3) business days before the hearing. In the case of testimony to be presented at a closed session held in response to a request under § 207.24(d), confidential and non-confidential versions shall be filed in accordance with § 207.3 of this chapter. Any person not a party may make a brief oral statement of information pertinent to the investigation.

(c) *Hearing Transcripts*—(1) *In general.* A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) *Revision of transcripts.* Within ten (10) days of the completion of a hearing, but in any event at least one (1) day prior to the date for disclosure of information set pursuant to § 207.30(a), any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions shall be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, he shall incorporate the revision into a revised transcript.

* * * * *

d. Redesignated § 207.30 is revised to read as follows:

**§ 207.30 Comment on information.**

(a) In any final phase of an investigation under section 705 or section 735 of the Act, the Commission shall specify a date on which it will disclose to all parties to the investigation all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7. The date on which disclosure is made will occur after the filing of posthearing briefs pursuant to § 207.25.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, on stationery measuring 8½×11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information or comments on information disclosed prior to the filing of the posthearing brief shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3. By Order of the Commission:

Issued: September 21, 1995.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 95–24573 Filed 10–2–95; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF STATE

## 22 CFR Part 51

**[Public Notice 2262]**

## Bureau of Consular Affairs; Passports for Minors

**AGENCY:** Department of State.

**ACTION:** Notice of proposed rule.

**SUMMARY:** This Notice proposes to amend regulations regarding the basis

for issuance and denial of passports to minors, both in custodial dispute and non-dispute situations. These amendments are being proposed to promote the well being of minors and to discourage persons from circumventing valid court orders affecting minors.

**DATES:** Written comments must be received on or before December 4, 1995.

**ADDRESSES:** Interested persons are invited to submit comments in duplicate to the Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Room 6811, U.S. Department of State, Washington, D.C. 20520.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hunter, Deputy Assistant Secretary for Passport Services, Room 6811, U.S. Department of State, Washington, D.C. 20520; telephone: (202) 647–5366.

**SUPPLEMENTARY INFORMATION:** Present regulations prescribe the method of execution of a passport application for minors and address the issuance of passports to minors where a parent or guardian objects. 22 C.F.R. 51.27. Specifically, the current regulations provide for the denial of a U.S. passport to a minor who has been involved in a custodial dispute if the passport issuing office receives a court order from a court within the country in which passport services are sought. Such a court order must provide that the objecting parent, legal guardian or person in loco parentis has been granted custody, or forbid the child's departure from the country in which passport services are sought without the permission of the court.

The revised regulations would implement a policy of denying passport services to minors on the basis of a court order of competent jurisdiction that has been registered with the appropriate office at the Department of State. For the purpose of these regulations, the Department will consider a court of competent jurisdiction to be a U.S. state court or a foreign court having jurisdiction over child custody issues consistent with the principles of the Hague Convention on the Civil Aspects of International Child Abduction and the Uniform Child Custody Jurisdiction Act, which favor the exercise of custody jurisdiction by the court of the child's ''habitual residence'' or ''home state.'' While the Department of State is not legally bound by U.S. state court and foreign court custody orders, the Department has determined that honoring such orders is generally appropriate to prevent unlawful child abductions. The revised regulations would however, also authorize the issuance of a passport to a minor who is the subject of a custody dispute if compelling humanitarian or emergency reasons relating to the minor's welfare warrant the issuance of a passport.

Also included in the proposed amendments is information regarding release of information about a minor's passport application to an objecting parent.

This rule is not exempt from E.O. 12866, but has been reviewed and found to be consistent with the objectives thereof. This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 51

Passports, Infants and Children.

For the reasons set forth in the preamble, 22 CFR 51.27 is proposed to be amended as follows:

## PART 51—PASSPORTS

### Subpart B—Application

1. The authority citation for section 51.27 continues to read as follows:

Authority: 22 U.S.C. 2658 and 3926; 31 FR 13540, Oct. 20, 1966, as amended at 43 FR 1791, Jan. 12, 1976; 44 FR 41777, July 18, 1979; 49 FR 16989, Apr. 23, 1984.

2. Section 51.27 is amended by revising paragraphs (b), (c) and (d) to read as follows:

**§ 51.27 Minors.**

* * * * *

(b) Execution of application for minors.

(1) A minor of age 13 years or above shall execute an application on his or her own behalf unless in the judgment of the person before whom the application is executed it is not desirable for the minor to execute his or her own application. In such case it must be executed by a parent or guardian of the minor, or by a person in loco parentis.

(2) A parent, a guardian, or person in loco parentis shall execute the application for minors under the age of 13 years. Applications may be executed by either parent, regardless of the parent's citizenship. Permission of or notification to the other parent will not be required unless such permission or notification is required by a court order which has been registered with the Department of State by an objecting parent as provided in 51.27 (d)(1).

(3) The passport issuing office may require a minor under the age of 18 years to obtain and submit the written consent of a parent, a legal guardian or a person in loco parentis to the issuance of the passport.

(c) Objection by parent, guardian or person in loco parentis in cases not involving a custody dispute. At any time prior to the issuance of a passport to a minor, the application may be disapproved and a passport will be denied upon receipt of a written objection from a person having legal custody of the minor.

(d) Objection by parent, guardian or person in loco parentis in cases where minors are the subject of a custody dispute.

(1) (i) When there is a dispute concerning the custody of a minor, a passport may be denied if the Department has on file a court order granted by a court of competent jurisdiction in the United States or abroad which:

(A) Grants sole custody to the objecting parent; or,

(B) Establishes joint legal custody; or,

(C) Prohibits the child's travel without the permission of both parents or the court; or,

(D) Requires the permission of both parents or the court for important decisions, unless permission is granted in writing as provided therein.

(ii) For passport issuance purposes, a court order providing for joint legal custody will be interpreted as requiring the permission of both parents. The Department will consider a court of competent jurisdiction to be a U.S. state court or a foreign court located in the child's home state or place of habitual residence. Notwithstanding the existence of any such court order, a passport may be issued when compelling humanitarian or emergency reasons relating to the welfare of the child exist.

(2) Either parent may obtain information regarding the application for and issuance of a passport to a minor unless the inquiring parent's parental rights have been registered with the appropriate office at the Department of State; provided, however, that the Department may deny such information to any parent if it determines that the minor is of sufficient maturity to assert a privacy interest in his/her own right, in which case the minor's written consent to disclosure shall be required.

(3) The Department may require that conflicts regarding custody orders, whether domestic or foreign, be settled by the appropriate court before a passport may be issued.

Dated; September 21, 1995.

Mary Ryan,

*Assistant Secretary of State for Consular Affairs.*

[FR Doc. 95–24344 Filed 10–2–95; 8:45 am]

**BILLING CODE 4710–06–M**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## 29 CFR Part 1625

## Coverage of Apprenticeship Programs Under the Age Discrimination in Employment Act (ADEA)

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Due to changing circumstances in the workforce and structural changes in the workplace, the Commission has decided to review its interpretation excluding apprenticeship programs from coverage under the ADEA to determine whether it is required by the language of the Act and to assess the policy considerations involved, i.e., does the interpretation implement sound policy under present day conditions. In order to conduct that review and in accordance with Executive Order 12866 the Commission proposes to seek public comment on rescinding the existing interpretation and issuing a legislative rule covering apprenticeship programs under the ADEA. The Commission hopes to determine from the comments whether a proposed rule covering apprenticeship programs would better advance the ADEA's objectives of promoting the employment of older persons based on their ability rather than age, and prohibiting arbitrary age discrimination in employment or whether there are sound policy reasons for retaining the current interpretation.

**DATES:** To be assured of consideration by the Commission, comments must be in writing and must be received on or before December 4, 1995.

**ADDRESSES:** Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 ''L'' Street, NW., Washington, DC 20507.

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (Telephone numbers published in this Notice are not toll-free). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078.

Comments received will be available for public inspection in the EEOC Library, room 6502, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from December 4, 1995 until the Commission publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD).

Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

**FOR FURTHER INFORMATION CONTACT:** Joseph N. Cleary, Assistant Legal Counsel or James E. Cooks, Senior Attorney Advisor, (202) 663–4690 (voice), (202) 663–7026 (TDD).

**SUPPLEMENTARY INFORMATION:**

### Historical Background

The Department of Labor (DOL) was initially given jurisdiction over the enforcement of the ADEA. In 1969, DOL published an interpretation that excluded apprenticeship programs from the ADEA. *See* 34 FR 323 (January 9, 1969). The rationale given by DOL for the ''no-coverage'' position was that apprenticeship programs had been traditionally limited to youths under a specified age in recognition of apprenticeship as an extension of the educational process.

The Commission assumed responsibility for enforcing the ADEA pursuant to Reorganization Plan No. 1 of 1978. *See* 45 FR 19807 (May 9, 1978). In June of 1979, the Commission published a notice in the Federal Register advising the public that all DOL interpretive guidelines on the ADEA would remain in effect until such time as the Commission could issue its own guidelines. *See* 44 FR 37974 (June 29, 1979). In November of 1979, the Commission published its own proposed ADEA Guidelines, but did not include a proposal on the apprenticeship issue. *See* 44 FR 68858 (Nov. 30, 1979).

On September 23, 1980, the Commission preliminarily approved a proposed recision of the DOL position on apprenticeship and voted to replace it with a legislative rule providing for coverage of apprenticeship programs. The Commission then published for comment a proposed legislative rule stating that age limitations in apprenticeship programs would be unlawful under the ADEA unless justified as a BFOQ or specifically exempted by the Commission under section 9 of the Act. *See* 45 FR 64212 (Sept. 29, 1980).

After considering the public comments submitted in response to this proposal, the Commission declined to adopt it by a vote of 2–2. It then republished the DOL interpretive rule as part of its final ADEA interpretations. *See* 46 FR 47726 (Sept. 29, 1981).

In August of 1983, a United States District Court in New York reviewed the Commission's position on the applicability of the ADEA to apprenticeship programs in *Quinn* v. *New York State Electric and Gas Corp.*, 569 F. Supp. 655 (1983). The *Quinn* court, *inter alia*, found the interpretation invalid because it was not supported by ''the language, purpose, and legislative history of the ADEA.'' *Quinn*, 569 F. Supp. at 664. The Commission, however, was not a party in this case, and the court's decision did not require that the Agency take any action regarding its apprenticeship interpretation.

In 1984 the Commission revisited the issue, expressing serious concern about the interpretation. Prompted by this concern, the Commission voted 4–0 to send a proposal to the Office of Management and Budget (OMB) that would rescind the apprenticeship interpretation and replace it with a legislative rule covering apprenticeship programs under the Act. However, the proposal was never published in the Federal Register for public comment. On July 30, 1987, the Commission voted 3–1 to terminate the proposed regulatory action and affirmatively approved the interpretation excluding apprenticeship programs. *See* 52 FR 33809 (Sept. 8, 1987).

In 1995, a lawsuit was filed challenging the interpretation as an arbitrary and capricious agency action within the meaning of the Administrative Procedure Act. 5 U.S.C. sec. 551 *et seq.* The Commission is of the view that its prior actions with respect to the difficult issue of the

proper relationship between the ADEA and apprenticeship programs have been reasonable, deliberate, and taken in good faith. The Commission rejects any claim that it has acted in a manner that is arbitrary and capricious or otherwise inconsistent with law.

The Commission is also of the view, however, that neither the ADEA nor its legislative history requires the existing position or prohibits the proposed change—both are silent on the issue. Therefore, because of changing circumstances in the workforce and structural changes in the workplace, we have decided to reassess our position in order to insure the most appropriate policy under present circumstances. In connection with this reassessment, the Commission has decided to seek public comment on a proposal rescinding the current interpretation and replacing it with a substantive regulation which would provide that apprenticeship programs are subject to the ADEA[1]

Reasons for Issuing the Notice of Proposed Rulemaking

Congress has directed the Commission to help employers and workers find ways of meeting problems arising from the impact of age on employment. 29 U.S.C. sec. 621 (b). The Commission can fulfill this obligation in part by reviewing periodically its interpretive regulations in light of applicable law and policy. Public comment is vital to the Commission's effort in this regard.

One problem facing many within the ADEA'S protected age group is that changing technology and dynamic market conditions have left a substantial number of older persons not only without jobs but often without the prospect of future jobs. Additionally, many older women encounter serious barriers when they seek to enter or reenter the workplace. Congress itself has observed that older workers frequently find themselves disadvantaged in their effort to retain employment, and especially to regain employment when displaced from jobs. 29 U.S.C. sec. 621(a)(1). The Commission is examining the factors which contribute to many of the problems facing older workers and is now seeking public comment to determine if this situation can be improved by the elimination of the provision exempting apprenticeship programs from ADEA coverage.

To begin with, the Commission notes that demographically the workforce is changing more rapidly then ever before. The older worker population has doubled over the past 30 years and is expected to continue to increase. In the not too distant future, older people are expected to outnumber children and youth. As a consequence, older workers are considered an important resource in today's market place. The Commission seeks to determine whether a change in the interpretation would benefit employers and/or workers or whether employers and/or workers would be better served by retaining the current interpretation.

A second critical issue is the impact of the current interpretation on groups that have been disadvantaged by historical employment discrimination. The latest census figures demonstrate that minorities and women are poorly represented in the crafts and that minorities have unemployment levels almost triple that of the majority. With respect to participation in skilled labor positions, census data from 1980 show that women occupied 7.8% of the available positions, African Americans 6.8%, Hispanics 6.1% American Indians 0.6%, Asians, 1.0%, and minority women 1.8%. The 1990 census data show that participation by women decreased overall to 7.5% and demonstrate no gain at all for minority women. The same data shows extremely modest gains in overall representation of minorities with African Americans constituting 7.2%, Hispanics 8.8%, American Indians 0.8%, and Asians 1.6% of all skilled laborers. The Commission is interested in gathering information which will help determine whether, and if so how, removing the interpretation would affect minorities and women.

Third, the Commission would like to reexamine: (i) Whether removing age barriers from apprenticeship programs would diminish training opportunities for youth; and (ii) whether removing age barriers from apprenticeship programs would increase costs because older trainees, unlike younger ones, would leave the workforce before the employer is able to recoup a fair return on its training investment. Input, particularly from employers, labor organizations and other interested individuals or groups, would greatly assist the Commission in its efforts to determine whether recision of the interpretation would reduce the number of employer/labor organization sponsored apprenticeship programs.

In this regard, preliminary information suggests that (i) Many of the states currently prohibit age discrimination in apprenticeship programs—there also may be county and municipal laws with similar prohibitions; (ii) many, if not most, craft/skilled trade apprenticeship programs now operate without age limitations; and (iii) job mobility today is more the rule than the exception for workers of all ages. The Commission is specifically interested in whether there is evidence which demonstrates that fewer apprenticeship programs operate in jurisdictions that prohibit age discrimination. If so, is increased cost the reason for fewer programs or are there other explanations? Is there evidence demonstrating that youth are deprived of training opportunities when programs abandon age limitations or are prohibited from using them? Is there evidence showing that younger trainees remain with an employer longer than trainees age 40 and older? If such evidence exists, is the difference in average length of service great enough to increase the cost of operating an apprenticeship program without an age limitation? The Commission will carefully assess all comments bearing on these matters before developing its final position.

Finally, the Commission is interested in examining any information which provides insight into the question of whether apprenticeship programs are an extension of the educational process rather than employment. This includes any data demonstrating that apprenticeship should be considered employment because apprentices perform work that an employer would have to hire others to perform in the absence of the apprentices, or which demonstrates apprenticeship should be considered an extension of education because its main purpose is to teach vocational skills.

The Commission also notes that under sec. 9 of the ADEA it has the authority to permit covered entities to establish age limitations in bona fide apprenticeship programs when such limitations are necessary and proper in the public interest. In addition, programs that seek to provide training opportunities specifically for persons with special employment problems, for example, disadvantaged youth or minority youth, may be able to do so under an existing Commission exemption. *See* 29 CFR sec. 1627.16. Commentors are encouraged to address whether any of these specific provisions are adequate to meet the legitimate needs of apprenticeship programs.

For all the above reasons, as well as any others that commenters may want to bring to its attention, the Commission seeks public comment on a proposal to rescind the interpretation and, using its

[1] An ''(a)dministrative agency concerned with furtherance of the public interest is not bound to rigid adherence to its prior rulings.'' *Columbia Broadcasting System V. Federal Communications Commission,* 454 F.2d 1018, 1026 (D.C. Cir. 1971).

substantive rulemaking authority under sec. 9 of the ADEA, to promulgate a rule providing that apprenticeship programs are subject to the Act.

Executive Order 12866, Regulatory Planning and Review

The Equal Employment Opportunity Commission has determined that this is not a significant rule as defined by Executive Order 12866 and will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, or local or tribal governments or communities. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Similarly, the Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required.

The Commission is desirous of receiving comments concerning this proposed rule from interested members of the public. Accordingly, the Commission will receive comments for a period of 60 days after publication. The Commission will consider such comments before taking final action.

In addition, in accordance with Executive Order 12067, the Commission has solicited the views of affected Federal agencies.

The proposed rule appears below.

List of Subjects in 29 CFR Part 1625

Advertising, Aged, Employee benefit plans, Equal employment opportunity, Retirement.

Signed at Washington, D.C. this 22 day of September, 1995.

Gilbert F. Casellas,

*Chairman.*

It is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

## PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

**§ 1625.13 [Removed]**

2. In Part 1625, § 1625.13 would be removed.

### Subpart B—Substantive Regulations

3. In Part 1625, § 1625.21 would be added to Subpart B—Substantive Regulations to read as follows:

**§ 1625.21 Apprenticeship programs.**

All apprenticeship programs, including those apprenticeship programs created or maintained by joint labor—management organizations, are subject to the proscriptions of sections 4(a) and 4(c) of the Act, 29 U.S.C. 623(a) and (c). Age limitations in those programs are valid only if excepted under section 4(f)(1) or specifically exempt under section 9 of the Act in accordance with the rule set forth in 29 CFR 1627.15.

[FR Doc. 95–24174 Filed 10–2–95; 8:45 am]

BILLING CODE 6570–01–M

## DEPARTMENT OF DEFENSE

### Defense Investigative Service

### 32 CFR Part 321

### Privacy Program

**AGENCY:** Defense Investigative Service, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** The Defense Investigative Service proposes to exempt a system of records identified as V5-04, entitled Counterintelligence Issues Database (CII-DB), from certain provisions of 5 U.S.C. 552a. Exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

**DATES:** Comments must be received no later than December 4, 1995, to be considered by the agency.

**ADDRESSES:** Send comments to the Chief, Office of Information and Public Affairs (V0020), Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Hartig at (703) 325–5324.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute ''significant regulatory action''. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 321

Privacy.

Accordingly, 32 CFR part 321 is amended as follows:

1. The authority citation for 32 CFR part 321 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 321.14, paragraph (g) is redesignated as (h) and a new paragraph (g) is added as follows:

**§ 321.14 Exemptions.**

* * * * *

(g) System identifier. VDIS V50904.

(1) *System name.* Counterintelligence Issues Database (CII-DB).

(2) *Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5) may be exempt from the following subsections (c)(3); (d)(1) through (d)(5); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5).

(4) *Reasons.* From subsection (c)(3) because giving the individual access to the disclosure accounting could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This would seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

From subsection (d) because the application of these provisions could impede or compromise an investigation or prosecution if the subject of an investigation had access to the records or were able to use such rules to learn of the existence of an investigation before it would be completed. In addition, the mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

From subsection (e)(1) because during an investigation it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation. In addition, during the course of an investigation, the investigator may obtain information that related primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, DIS investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

From subsections (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) because this system is exempt from subsection (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that these records will be exempt from these subsections. However, DIS has published information concerning its notification and access procedures, and the records source categories because under certain circumstances, DIS could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

* * * * *

Dated: September 28, 1995.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense*

[FR Doc. 95–24471 Filed 10–2–95; 8:45 am]

BILLING CODE 50000–04–F

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 302 and 355

**[FRL–5311–1]**

## Administrative Reporting Exemptions for Certain Radionuclide Releases

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On August 4, 1995 (60 FR 40042), the U.S. Environmental Protection Agency (EPA or the Agency) requested comments on administrative exemptions for certain radionuclide releases from reporting requirements under section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA). EPA requested that public comments on the proposed rule be submitted by October 3, 1995. To date, the Agency has received three written requests for a 60-day extension to the public comment period. In response to these requests, EPA, in today's action, is granting an extension to the public comment period to allow the public greater opportunity to evaluate the issues raised by the August 4, 1995 proposed rule.

**DATES:** Comments on the August 4, 1995 proposed rule must be submitted on or before December 4, 1995.

**ADDRESSES:** *Submittal of Comments:* Comments should be submitted in triplicate (no facsimiles or tapes) to: Docket Coordinator; Docket Number 102RQ–RN–2; Headquarters; U.S. Environmental Protection Agency CERCLA Docket Office; (Mail Code 5201G); 401 M Street SW. Washington, DC 20460; 703/603–8917. Please note that this is the mailing address only. Documents are available for viewing, by appointment only, at the address provided below in the ''Document Viewing'' section.

*Document Viewing:* Copies of materials relevant to the August 4, 1995 proposed rule are contained in Docket Number 102RQ–RN–2 at the U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The docket is available for viewing, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to view the docket can be made by calling 703/603–8917. Please note that this is the visiting address only. Mail comments to the address listed above in the ''Submittal of Comments'' section.

The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The Docket Office will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810); the Telecommunications Device for the Deaf (TDD) Hotline at 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or Mr. Jack Arthur, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or at 703/603–8760.

**SUPPLEMENTARY INFORMATION:** In a proposed rule published on November 30, 1992 (57 FR 56726), the Agency provided notice of, and requested comment on, four exemptions from notification requirements under CERCLA section 103 and EPCRA section 304. The Agency proposed to exempt: (1) Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility

and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers. All background materials and public comments related to the November 30, 1992 proposal are available for inspection in Docket Number 102RQ–RN–1 located at the U.S. EPA CERCLA Docket Office (address provided above in the ''Document Viewing'' section).

After evaluating the public comment letters received on the November 30, 1992 proposal, the Agency decided to issue a supplemental proposal, which was published on August 4, 1995 (60 FR 40042), to request information and comment on expanded reporting exemptions for radionuclide releases. In the August 4, 1995 proposal, EPA proposed to grant reporting exemptions for releases of naturally occurring radionuclides associated with (1) land disturbance incidental to extraction activities at certain kinds of mines, and (2) coal and coal ash piles at all kinds of sites. The Agency also requested comments on two alternatives to these exemptions.

The three comment letters received to date that requested a 60-day extension to the comment period for the August 4, 1995 proposed rule cited a number of factors contributing to their request: (1) The volume and complexity of the technical information EPA used to support the proposed exemptions; (2) the need to address the basis not only for the proposed expanded reporting exemptions, but also for the two alternatives as well as other aspects of the proposal; and (3) the need to review two different rulemaking dockets (one for the August 4, 1995 proposal and one for the November 30, 1992 proposal) to prepare more thorough comments.

EPA recognizes that additional time may be warranted to prepare public comments on the August 4, 1995 proposal, based on the factors described above. In addition, the Agency does not believe that the temporary delay in the schedule for finalizing the exemptions will pose a threat to public health, welfare, or the environment. Thus, in today's action, EPA is granting a 60-day extension to the comment period for the August 4, 1995 proposal.

Elaine Davies,

*Acting Director, Office of Emergency and Remedial Response.*

[FR Doc. 95–24581 Filed 10–2–95; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 32 and 52

**[FAR Case 91–118]**

**RIN 9000–AG49**

## Federal Acquisition Regulation; Payment by Electronic Fund Transfer

**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 considering changes to the Federal Acquisition Regulation (FAR) to address the use of electronic fund transfers for Federal contract payments. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

**DATES:** *Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before December 4, 1995.

**ADDRESSES:** Comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4037, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501–3221 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 91–118.

**SUPPLEMENTARY INFORMATION:**

A. Background

The Councils are committed to advancing the use of electronic fund transfers (EFT) as the standard method of payment under Federal contracts and believe that the use of EFT will ultimately reduce the administrative burden currently associated with contract invoice or financing payments made by check. The Councils also believe that many of the banks used by Federal contractors are not currently capable of properly handling the complex data transmissions used for many Government contract payments. Similarly, many Government offices involved in certifying invoices and disbursing contract payments are not currently capable of using EFT as the standard method of payment. In drafting the proposed rule, the Councils tried to avoid committing the Government to the routine use of EFT capabilities it does not yet possess. This does not lessen the Councils' commitment to the use of EFT as a contract payment method but recognizes that, as new computer systems and attendant EFT procedures develop in both the public and private sectors, the use of EFT as a normal payment practice will also expand.

The proposed rule amends FAR Subpart 32.9 to provide guidance concerning the use of electronic fund transfers (EFT) as a method of contract payment. The rule also adds solicitation provisions and contract clauses at FAR section 52.232 to implement the guidance. The rule establishes a requirement for contractors to provide certain information which would enable the Government to make payments under the contract by electronic fund transfer rather than by check. The information necessary to make the EFT transaction is specified in two new clauses at section 52.232–00, Mandatory Information for Electronic Fund Transfer Payment, and section 52.232–01, Optional Information for Electronic Fund Transfer Payment. Under section 52.232–00, the contractor is required to provide the information, prior to the submission of the first request for payment, as a condition of payment under the contract. The clause at section 52.232–01 is used if EFT may become a viable method of payment during the period of contract performance and if the contractor consents and provides the necessary data to enable payment by EFT.

B. Regulatory Flexibility Act

The proposed FAR changes may have a significant 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 the changes are intended to advance the use of EFT as a method of contract payment and reduce the current administrative burden associated with payments made by check. Under the proposed regulations, any business which enters into a contract with the Government would be required to submit certain information which would enable the Government to make contract payments by EFT rather than by check. This requirement may have a significant impact on a substantial number of small businesses because it is expected that the majority of small businesses will receive

payments by EFT under their contracts when EFT becomes the standard method of contract payment. Based on fiscal years 1991 and 1992 data for contracts over $25,000, if fully implemented, EFT as a method of payment would affect nearly 22,000 small businesses who received over 86,000 new contract awards. An Initial Regulatory Flexibility Analysis (IRFA) has been performed. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will 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 91–118), in all correspondence.

C. Paperwork Burden

Under the provisions of the Paperwork Reduction Act of 1995 (Pub.L. 104–13), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement under Section 3507(d) of the Act concerning Payment by Electronic Fund Transfer.

*Dates:* Comments may be submitted on or before December 4, 1995.

*Addresses:* Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the FAR Secretariat at the address listed below for comments on the proposed rule.

*Annual Reporting Burden:* Public reporting burden for this collection of information is estimated to average .5 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 General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated to be $2,235,000 as a result of the following estimated number of hours of labor for compliance: Respondents, 31,000; responses per respondent, 10; total annual responses, 310,000; preparation hours per response, .5; and total response burden hours, 155,000.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: September 27, 1995.

C. Allen Olson,

*Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR parts 32 and 52 be amended as set forth below:

## PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473.

2. Section 32.902 is amended by adding the definition of ''Specified payment date'' in alphabetical order to read as follows:

### 32.902 Definitions.

* * * * *

*Specified payment date* means, for a payment by electronic fund transfer (EFT), the date which the Government has placed in the EFT payment transaction instruction given to the Federal Reserve System, as the date on which the funds are to be transferred to the contractor's financial agent (see 32.911–3). However, a specified payment date mut be a valid date under the rules of the Federal Reserve System. For example, if the Federal Reserve System requires two days' notice before a specified payment date to process a transaction, release to the Federal Reserve Bank of a payment transaction instruction one day before the specified payment date could not constitute a valid date under the rules of the Federal Reserve System.

3. Section 32.908 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

### 32.908 Contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at section 52.232–00, Mandatory Information for Electronic Fund Transfer Payment, in all solicitations and contracts unless instructed not to by the cognizant payment office.

(e) The contracting officer shall insert the clause at section 52.232–01, Optional Information for Electronic Fund Transfer Payment, in all solicitations and contracts not containing the clause at section 52.232–00.

### 32.910 [Reserved]

4. Section 32.910 is reserved.

5. Sections 32.911 through 32.911–4 are added to read as follows:

### 32.911 Payment by electronic fund transfer (EFT).

#### 32.911–1 Policy.

(a) The decision as to which clause is to be included in a contract is that of the office responsible for making payment on the contract per 31 CFR part 206. Normally, the payment office will notify the contracting office of which clause to use. However, when in doubt, the contracting officer shall consult with the payment office. (Note: If the certifying and disbursing functions are separated, the decision as to which clause to use shall be made by the office performing the disbursing function.)

(b) Contracting officers shall not commit the Government to use or not use EFT, but shall refer all contractor requests to the payment office. When authorized by agency regulations, the payment office has the authority not to exercise the Government's right to require submission of EFT information.

(c) The clause at section 52.232–00 contains the terms and conditions for payment by EFT and permits the Government to refuse to make any payments until the contractor submits the information needed to make payment by EFT.

(d) The clause at section 52.232–01 states the terms and conditions for EFT payment if the contractor should request that the Governor use EFT for payment.

(e) If more than one payment office will be making payments on a contract, the contracting officer shall include the EFT clause appropriate for each office and shall identify the applicability by payment office and contract line item.

#### 32.911–2 EFT information.

To protect against improper disclosure of a contractor's EFT information, the clauses at section 52.232–00 and section 52.232–01 require the contractor to submit such information directly to the payment office. However, if the information is inadvertently sent to the contracting officer, the information shall be protected and delivered immediately to the designated payment office.

#### 32.911–3 Prompt payment.

The information provided to the Federal Reserve system that constitutes the Government's order to pay the contractor includes a specified payment date. The valid specified payment date is the date of payment for prompt payment purposes, whether or not the Federal Reserve system actually makes

the payment by that date, and whether or not the contractor's financial agent credits the contractor's account on that date.

**32.911–4 Assignment of claims.**

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information which shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the ''Suspension of Payment'' paragraphs of the EFT clauses section 52.232–00, Mandatory Information for Electronic Fund Transfer, and section 52.232–01, Optional Information for Electronic Fund Transfer.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**542.232–28 [Reserved]**

6. Section 52.232–28 is removed and reserved.

7. Sections 52.232–00 and 52.232–01 are added to read as follows:

**52.232–00 Mandatory Information for Electronic Fund Transfer Payment.**

As prescribed in 32.908(d), insert the following clause:

MANDATORY INFORMATION FOR ELECTRONIC FUND TRANSFER PAYMENT (DATE)

(a) *Method of payment.* Payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic fund transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may at its option, also forward the associated payment information by electronic transfer. For this clause, the term EFT includes both the fund transfer and the information transfer.

(b) *Mandatory submission of contractor's EFT information.* (1) The Contractor is required, as a condition to any payment under this contract, to provide the Government with the information required to make payment by EFT as described in paragraph (d) of this clause.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the payment office.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the changed information to the designated payment office(s).

(d) *Required EFT information.* The Government may make payment by EFT through either the Automated Clearing House (ACH) or Federal Reserve System wire transfer at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph b of this clause).

(1) The contract number to which this notice applies.

(2) The Contractor's name and account number at the Contractor's financial agent.

(3) The signature, title, and telephone number of the Contractor Official authorized to provide this information.

(4) For ACH payments only:

(i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(ii) Contractor's account number and the type of account (checking, saving, or lockbox).

(5) For Federal Reserve System Wire Transfer payments only:

(i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent.

(ii) If the Contractor's financial agent is not directly on-line to the Federal Reserve System's wire transfer network, and therefore not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial agent receiving the wire transfer payment.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause, the Government is not required to make any payment under this contract until after receipt from the Contractor of the correct EFT payment information by the designated payment office. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.

(2) If the EFT information changes, after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Contractor EFT arrangements.* The Contractor shall designate a single financial agent capable of receiving and processing the electronic fund transfer and associated electronic payment information transfer, using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided EFT information in the correct manner, the Government remains responsible for (i) making a correct payment, (ii) paying any prompt payment penalty due, and (iii) recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Contractor-provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve System, and:

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds, or

(ii) If the funds remain under the control of the payment office, the Government retains the rights to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction instruction given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified due date is a valid date under the rules of the Federal Reserve System.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within seven days after the Government is notified of the defective EFT information.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the clause at section 52.232–23, Assignment of Claims, the assignee shall provide the EFT information required by paragraph (d) of this clause for the assignee. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Payment office discretion.* If the Contractor does not wish to receive payment by EFT methods for one or more payments, a request may be submitted to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.

(End of clause)

**52.232–01 Optional information for electronic fund transfer payment.**

As prescribed in 32.908(e), insert the following clause:

OPTIONAL INFORMATION FOR ELECTRONIC FUND TRANSFER PAYMENT (DATE)

(a) *Method of payment.* After the Contractor provides the information described in paragraph (d) of this clause, in accordance with paragraph (b), payments by the Government under this contract, including invoice and contract financing payments, may by made by check or electronic fund transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. For this clause, the term EFT includes both the fund transfer and the information transfer.

(b) *Contractor consent.* (1) If the Contractor is willing to be paid by EFT, the Contractor shall provide the EFT information described in paragraph (d) of this clause. If the Contractor does not provide the EFT information, this clause is inoperative. The Contractor agrees that, after providing EFT information in accordance with this clause, the Contractor cannot withdraw the Government's right to make payment by EFT for this contract.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the payment office.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, for which the Contractor desires EFT payment, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the changed information to the designated payment office(s).

(d) *Required EFT information.* The Government may make payment by EFT through either the Automated Clearing House (ACH) or Federal Reserve System wire transfer at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).

(1) The contract number to which this notice applies.

(2) The Contractor's name and account number at the Contractor's financial agent.

(3) The signature, title, and telephone number of the Contractor official authorized to provide this information.

(4) For ACH payment only:

(i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(ii) Contractor's account number and the type of account (checking, saving, or lockbox).

(5) For Federal Reserve System Wire Transfer payments only:

(i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent,

(ii) If the Contractor's financial agent is not directly on-line to the Federal Reserve System's wire transfer network, and therefore not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial agent receiving the wire transfer payment.

(e) *Suspension of payment:* (1) Notwithstanding the provisions of any other clause, if after receipt of the Contractor's EFT information in accordance with paragraph (b) of this clause, the EFT information is found to be incorrect, and until after receipt from the Contractor of the correct EFT information by the designated payment office: (i) the Government is not required to make any further payment under this contract; and (ii) any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.

(2) If the EFT information changes, after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Contractor EFT arrangements.* The Contractor shall designate a single financial agent capable of receiving and processing the electronic fund transfer and associated electronic payment information transfer, using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided EFT information in the correct manner, the Government remains responsible for (i) making a correct payment, (ii) paying any prompt payment penalty due, and (iii) recovering any erroneously directed funds.*

(2) If an uncompleted or erroneous transfer occurs because Contractor-provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve system, and:

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds, or

(ii) If the funds remain under the control of the payment office, the Government retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction instruction given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified due date is a valid date under the rules of the Federal Reserve System.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within seven days after the Government is notified of the defective EFT information.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the clause at section 52.232–23, Assignment of Claims, the assignee shall provide the EFT information required by paragraph (d) of this clause for the assignee. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Payment office discretion.* If the Contractor does not wish to receive payment by EFT methods for one or more payments, a request may be submitted to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.

(End of clause)

[FR Doc. 95–24579 Filed 10–2–95; 8:45 am]

BILLING CODE 6820–EP–M

# Notices

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 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

### Food Safety and Inspection Service

**[Docket No. 95–042N]**

### National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meeting

The National Advisory Committee on Microbiological Criteria for Foods (NACMCF), Subcommittee on the Hazard Analysis and Critical Control Points System (HACCP), will hold a meeting on October 10 and 11, 1995, at the National Center for Food Safety and Technology, Room 304, 6502 South Archer Road, Summit-Argo, Illinois 60501, (708) 563–1576. The Subcommittee will meet on Tuesday, October 10, from 12 p.m. to 5 p.m. and on Wednesday, October 11, from 8:30 a.m. to 3 p.m.

The Subcommittee's work is under the auspices of the NACMCF which provides advice and recommendations to the Secretaries of Agriculture, and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. This includes criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing practices. The Food Safety and Inspection Service has asked the NACMCF to review and consider modifications to the NACMCF document on HACCP which was adopted in 1992. The Subcommittee has been charged with conducting the review of the document.

The Subcommittee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street NW., West End Court Building, Washington, DC 20250–3700. Comments may also be sent to Mr. Fedchock on FAX No. (202) 254–2530. Background materials are available for inspection by contacting Mr. Fedchock on (202) 254–2517.

Done at Washington, DC, on: September 27, 1995.

Michael R. Taylor,

*Administrator.*

[FR Doc. 95–24621 Filed 9–28–95; 4:02 pm]

BILLING CODE 3410–DM–P

## Forest Service

### Appalachian Power Company Transmission Line Construction-Cloverdale, VA, to Oceana, WV; George Washington and Jefferson National Forests, Appalachian National Scenic Trail, the New River, and R.D. Bailey Lake Flowage Easement Land; Virginia Counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland, and Giles and the West Virginia Counties of Monroe, Summers, Mercer, and Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice—revises the publication date for the draft and final environmental impact statements; changes the name of the responsible official for the National Park Service and provides updated information on the federal agenices' analysis.

**SUMMARY:** The Forest Service will prepare a draft and final environmental impact statement on a proposed action to authorize the Appalachian Power Company to construct a 765,000-volt transmission line across approximately twelve miles of the George Washington and Jefferson National Forests, as well as portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake) and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River).

The federal agencies identified a study area in which alternatives to the proposed action were developed. The study area includes land located in the Virginia counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland and Giles and the West Virginia counties of Monroe, Summers, Mercer and Wyoming.

The Appalachian Power Company proposal involves federal land under the administrative jurisdiction of the USDA Forest Service (George Washington and Jefferson National Forests), the USDI National Park Service (Appalachian National Scenic Trail) and the US Army Corps of Engineers (New River and R.D. Bailey Lake Flowage Easement Land).

The Forest Service is the lead agency and is responsible for the preparation of the environmental impact statement. The National Park Service and the US Army Corps of Engineers are cooperating agencies in accordance with 40 CFR 1501.6.

In initiating and conducting the analysis the federal agencies are responding to the requirements of their respective permitting processes and the need for the Appalachian Power Company to cross federal lands with the proposed transmission line.

The Forest Service additionally will assess how the proposed transmission line conforms to the direction contained in the Jefferson National Forest's Land and Resource Management Plan (LRMP). Changes in the LRMP could be required if the transmission line is authorized across the George Washington and Jefferson National Forests.

The total length of the electric transmission line proposed by the Appalachian Power Company is approximately 115 miles.

The Notice of Intent for the proposed action was published in the Federal Register on November 21, 1991 (56 FR 58677–58679). The Notice was revised on March 13, 1992 (57 FR 8859), April 24, 1992 (57 FR 15049), June 16, 1993 (58 FR 33248–33250) June 21, 1994 (59 FR 31975–31978) and June 9, 1995 (60 FR 30511–30514).

**FOR FURTHER INFORMATION CONTACT:** Frank Bergmann, Forest Service Project Coordinator, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019/(540) 265–6005.

**TO PROVIDE COMMENTS TO THE FEDERAL AGENCIES:** Write to the George Washington and Jefferson National Forests, Attn: Transmission Line Analysis, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019.

**SUPPLEMENTARY INFORMATION:** The Appalachian Power Company submitted

an application to the Jefferson National Forests (the name changed in 1995) for authorization to construct a 765,000-volt electric transmission line across approximately twelve miles of the National Forest. Portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake), and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River) would also be crossed by the proposed transmission line.

Studies conducted by the Appalachian Power Company and submitted to the Virginia State Corporation Commission, as part of its application and approval process, indicate a need to reinforce its extra high voltage transmission system by the mid-to-late 1990s in order to maintain a reliable power supply for projected demands within its service territory in central and western Virginia and southern West Virginia.

A study to evaluate potential route locations for the proposed transmission line was prepared for the Appalachian Power Company through a contract with Virginia Polytechnic Institute and State University (VPI) and West Virginia University (WVU). The information gathered by VPI and WVU, along with other information collected during the analysis process, will be utilized in the preparation of the environmental impact statement. Information about the transmission line approval is available from the George Washington and Jefferson National Forests.

The decisions to be made following the environmental analysis are whether the Forest Service, the National Park Service, and the US Army Corps of Engineers will authorize Appalachian Power Company to cross the George Washington and Jefferson National Forests, the Appalachian National Scenic Trail, and the New River and R.D. Bailey Lake Flowage Easement Land, respectively, with the proposed 765,000-volt transmission line and, if so, under what conditions a crossing would be authorized.

In preparing the environmental impact statement a range of routing alternatives will be considered to meet the purpose and need for the proposed action. A no action alternative will also be analyzed. Under the no action alterantaive APCO would not be authorized to cross the George Washington and Jefferson National Forests, the Appalachian National Scenic Trail, the New River or R.D. Bailey Lake Flowage Easement Land. The alternatives developed by VPI and WVU also be considered.

In July of 1994, the federal agencies identified a number of alternatives to the proposed action in the Virginia countries of Botetourt, Roanoke, Graig, Montgomery, Pulaski, Bland, and Giles and the West Virginia countries of Monroe, Summers and Mercer. These alternative corridors were modified by the federal agencies in May of 1995. A public comment period was afforded by the federal agencies on these alternative corridor modifications between May 25 and June 30, 1995.

The federal analysis will include an analysis of the effects of the proposed transmission line along the entire proposed route as well as all alternative routes which are considered in detail.

The significant issues identified for the federal analysis are listed below:

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) affect soil productivity by increasing soil compaction and erosion; (2) affect geologic resources (karst areas, Peters, Lewis, Potts Mountains, Arnolds Knob) and unique geologic features like caves through blasting, earthmoving or construction machinery operations; and (3) result in unstable structural conditions due to the placement of the towers.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) degrade surface and ground water quality due to the application of herbicides; (2) degrade surface and ground water quality because of sedimentation resulting from soil disturbance and vegetation removal; (3) reduce the quantity of ground and spring water due to the disturbance of aquifers resulting from blasting, earthmoving or construction machinery operation; and (4) adversely affect the commercial use of ground and surface waters due to herbicide contamination and sedimentation.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect existing cultural resources, and historic structures and districts through the direct effects of the construction and maintenance activities and by changing the existing resource setting.

—The operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect human health through (1) direct and indirect exposure to herbicides and (2) exposure to electromagnetic fields and induced voltage.

—The construction of the 765kV transmission line may adversely affect the safety of those operating aircraft at low altitudes or from airports located near the transmission line.

—The operation of the 765kV transmission line may (1) adversely affect communications by introducing a source of interference; (2) increase noise levels for those in close proximity to the line.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) adversely affect trails (including the Appalachian Trail) and trail facilities by facilitating vehicle access through new road construction and the upgrading of existing roads; and (2) reduce hiker safety by facilitating vehicle access to remote trail locations.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect hunting, fishing, hiking, camping, boating and birding opportunities and experiences because (1) the setting in which these pursuits take place may be altered; and (2) the noise associated with the operation of the line may detract from the backcountry or recreation experience.

—The construction and operation of the 765kV transmission line and the associated access roads and right-of-way may affect local communities by (1) reducing the value of private lands adjacent to the line; (2) decreasing tax revenues due to the reduction in land value; and (3) influencing economic growth, industry siting, and employment.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) conflict with management direction contained in resource management plans and designations; (2) affect the uses that presently occur on and adjacent to the proposed right-of-way; (3) affect the wild, scenic and/or recreational qualities of the New River; (4) affect sensitive land uses like schools, churches, and community facilities; (5) affect the cultural attachment residents feel toward Peters Mountain; and (6) affect the scenic and/or recreational qualities of the Appalachian National Scenic Trail (Appalachian Trail).

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect the visual attributes of the area because the line, the

associated right-of-way, and access roads may (1) alter the existing landscape; and (2) conflict with the standards established for scenic designations.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect wildlife, plant and aquatic populations, habitat and livestock because (1) habitats are created, changed or eliminated; (2) herbicides are used and herbicides may be toxic; (3) the transmission line presents a flight hazard to birds; (4) electromagnetic fields and induced voltage may be injurious.

—The construction of the 765kV transmission line and the associated access roads and right-of-way may have a disproportionately high and adverse human health or environmental effects on minority and low income populations as indicated in Executive Order 12898.

—The construction and operation of the 765kV transmission line may adversely affect astronomical observation activities at the Martin Observatory (VPI) due to the introduction of obstructions to the sky (lines and towers), the introduction of light from coronal discharge, and the disruption of sensitive electronic equipment by electromagnetic fields.

—The construction and operation of the 765kV transmission line may adversely affect seismological observation activities at the VPI seismic stations located near Forest Hill and Potts Mountain.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect the cultural attachment that residents have for the valley between Blacksburg and Catawba, Craig County, Mercer County and portions of Montgomery County. This issue was expanded to include Giles County.

The following permits and/or licenses would be required to implement the proposed action:

—Certificate of Public Convenience and Necessity (Virginia State Corporation Commission)

—Certificate of Public Convenience and Necessity (West Virginia Public Service Commission)

—Special Use Authorization (Forest Service)

—Right-of-Way Authorization (National Park Service)

—Section 10 Permit (US Army Corps of Engineers)

—Right-of-Way Easement (US Army Corps of Engineers)

—Consent to Easement (US Army Corps of Engineers)

Other authorizations may be required from a variety of Federal and State agencies.

Public participation will occur at several points during the federal analysis process. The first point in the analysis was the scoping process (40 CFR 1501.7). The Forest Service obtained information, comments, and assistance from Federal, State and local agencies, the proponent of the action, and other individuals or organizations who are interested in or affected by the electric transmission line proposal. This input will be utilized in the preparation of the draft environmental impact statement. The scoping process included, (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

Public participation was solicited through contracts with known interested and/or affected groups, and individuals; news releases; direct mailings; and/or newspaper advertisements. Public meetings were also held to hear comments concerning the Appalachian Power Company proposal and to develop the significant issues to be considered in the analysis.

A similar process of public involvement was implemented by the federal agencies for the Preliminary Alternative Corridors announced in July of 1995.

Other public participation opportunities will be provided throughout the federal analysis process.

The Forest Service routinely publishes newsletters describing various aspects of the federal agencies analysis of the transmission line proposal. The next newsletter is scheduled for publication in October of 1995 and will include a revision to alternative corridors currently being considered by the federal agencies.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by April 12, 1996. This revises the October 20, 1995 date previously announced. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the Federal Register. The comment period on the draft environmental impact statement will be 90 days from the date the EPA publishes the notice of availability in the Federal Register.

Reviewers needed to be aware of several court rulings related to public participation in the environmental impact statement review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentious. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the three federal agencies in preparing the final environmental impact statement. The federal agencies have decided to await the decisions of the Virginia State Corporation Commission and the West Virginia Public Service Commission on the Appalachian Power Company proposal before publishing the final environmental impact statement. It is not known when the two Commission's will issue their decisions. When these decisions are made the federal agencies will announce the publication date of the final environmental impact statement.

The responsible officials will consider the comments, responses, environmental consequences discussed

in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding the proposal to cross federal lands with a 765,000-volt transmission line. The responsible officials will document their decisions and reasons for their decisions in a Record of Decision.

The responsible official for the Forest Service is William E. Damon, Dr., Forest Supervisor, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019. The responsible official for the National Park Service is changed from Don King to Pamela Underhill, Acting Project Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia 25425. The responsible official for the the US Army Corps of Engineers in West Virginia is Colonel Richard Jemiola, US Army Corps of Engineers, Huntington District, 508 8th Street, Huntington, West Virginia 25701–2070. The responsible official for the US Army Corps of Engineers in Virginia is Colonel Andrew M. Perkins, Jr., US Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510.

Dated September 25, 1995.

William E. Damon, Jr.,

*Forest Supervisor, George Washington and Jefferson National Forests.*

[FR Doc. 95–24476 Filed 10–2–95; 8:45 am]

BILLING CODE 3410–11–M

## Klamath Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Klamath Provincial Advisory Committee will meet on October 23 and October 24, 1995 at the Weaverville Victorian Inn Conference Room, 1709 Main Street, Weaverville, California. The meeting will begin at 10 a.m. on October 23 and adjourn at 5 p.m. The meeting will reconvene at 8 a.m. on October 24 and continue until 4 p.m. Agenda items to be covered include: (1) Research and monitoring activities in the Province; (2) salvage activities discussion; (4) watershed selection criteria for setting priorities and status of completed and planned analyses; and (5) a public comment period. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Jim Anderson, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: September 27, 1995.

Robert J. Anderson,

*Land Management Planning Staff Officer.*

[FR Doc. 95–24517 Filed 10–2–95; 8:45 am]

BILLING CODE 3410–11–M

## Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon PIEC Advisory Committee will meet on October 19, 1995 at J. Herbert Stone Nursery in Central Point, Oregon. The meeting will begin at 8 a.m. and continue until 4 p.m. Agenda items to be covered include: (1) Recommendations for revising the standards and guides for large woody material; (2) Local area issues presentation; (3) Public forum. All Province Advisory committee meetings are open to the public, interested citizens are encouraged to attend; (4) Province ecosystem overview; (5) Rogue River National Forest ecosystem monitoring framework presentation and Northwest Forest Plan proposed effectiveness monitoring strategy.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Rogue River National Forest, P.O. Box 520, Medford, Oregon 97501, 503–858–2322.

Dated: September 26, 1995.

James T. Gladen,

*Forest Supervisor.*

[FR Doc. 95–24547 Filed 10–2–95; 8:45 am]

BILLING CODE 3410–11–M

# ASSASSINATION RECORDS REVIEW BOARD

## Freedom of Information Act Statement of Organizations, Functions, and Authority Delegations

**AGENCY:** Assassination Records Review Board.

**ACTION:** Notice.

**SUMMARY:** The Assassination Records Review Board (Review Board) is issuing the following notice in accordance with the affirmative disclosure provisions of the Freedom of Information Act (FOIA). The FOIA requires each Federal agency to publish in the Federal Register a statement of its organizations and functions.

This notice provides a brief history of the Review Board, describes the organization of the Review Board, and identifies the primary responsibilities of the Review Board.

**FOR FURTHER INFORMATION CONTACT:** T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC. 20530.

**SUPPLEMENTARY INFORMATION:** Congress conceived of the Assassination Records Review Board (Review Board) as an independent Federal agency to oversee the identification and release of records related to the assassination of President John F. Kennedy. President Bush signed into law The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (1992) (JFK Act) in October, 1992, and President Clinton appointed the five members of the Review Board. The Review Board members were sworn in on April 11, 1994, after confirmation by the Senate.

The JFK Act gives the Review Board the authority to identify, secure, and make available all records related to the assassination of President Kennedy. The Act provides that ''[a]ll Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure.'' The Act mandates that all assassination records be housed in a single collection at the National Archives and Records Administration (NARA).

The Review Board oversees a larger process of agency record review and release established by the JFK Act. The Act requires all Federal agencies to identify records in their possession that may relate to the assassination and to determine whether such records may be disclosed immediately or whether the agency will ask the Review Board to postpone release of the information. The Review Board then evaluates all agency decisions to postpone the release of records. The Act allows the Review Board to sustain Federal agencies' requests for postponements only if the information at issue falls into defined categories, such as national security, intelligence gathering, and privacy, provided the agency provides the Review Board ''clear and convincing evidence'' of some harm that outweighs the public interest in disclosure. Once the Review Board completes its review of agency recommendations for postponement, all records, including those that have postponed release dates, will be transferred to the National Archives for inclusion in the John F. Kennedy Assassination Record Collection. The JFK Act requires that all

assassination records be released by the year 2017, with the exception of records that the President of the United States certifies for continued postponement after that point.

The Review Board will seek to identify and secure assassination records held by Federal, state, and local governments as well as records held by private entities.

The Senate report on the JFK Act states that ''the underlying principles guiding the legislation are independence, public confidence, efficiency, and cost effectiveness.'' In order to achieve these objectives, the Act gives the Review Board the specific powers to: (1) Direct Government offices to provide identification aids and organize assassination records; (2) direct Government offices to transmit assassination records to the National Archives; (3) obtain assassination records that have been identified and organized by a Government office; (4) direct Government offices to investigate the facts, additional information, records, or testimony from individuals which the Review Board has reason to believe is required; (5) request the Attorney General to subpoena private persons to compel testimony, records, and other relevant information; (6) require any Government office to account in writing for the destruction of any records relating to the assassination of President Kennedy; (7) receive information from the public regarding the identification and public disclosure of assassination records; and (8) hold hearings, administer oaths, and subpoena witnesses and documents.

The Review Board is currently supported by a senior staff consisting of an Executive Director, an Associate Director for Communications, an Associate Director for Administration, and an Associate Director for Research and Analysis, who is also serving as Acting General Counsel. In addition to the senior staff, the Review Board has hired a Chief Investigator, fourteen analysts, five administrative support personnel, an investigator, and a part-time computer specialist.

Activities of the Review Board are carried out through the operation of a central office located in Washington, D.C. The Review Board's office is located at 600 E Street NW., 2nd Floor, Washington, DC 20530.

The Review Board has until October 1, 1996, to fulfill its mandate, plus an additional year at the Review Board's discretion to complete its responsibilities.

The Review Board issues this notice in accordance with the affirmative disclosure provisions of the FOIA, at 5 U.S.C. 552(a)(1).

Dated: September 27, 1995.

David G. Marwell,

*Executive Director.*

[FR Doc. 95–24507 Filed 10–2–95; 8:45 am]

BILLING CODE 6118–01–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held October 24, 1995, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

*General Session*

1. Opening remarks by the Chairmen.
2. Presentation of public papers or comments.
3. Report on status of New Forum negotiations.
4. Report on status of Export Administration Regulations (EAR) reform.
5. Update on issues regarding developmental aircraft.
6. Presentation on Iran Safety of Flight licensing procedures (Treasury).
7. Discussion on future Committee activity.
8. Election of new Chairman.

*Executive Session*

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 22, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 482–2583.

Dated: September 27, 1995.

Lee Ann Carpenter,

*Director, Technical Advisory Committee Unit.*

[FR Doc. 95–24513 Filed 10–2–95; 8:45 am]

BILLING CODE 3510–DT–M

### Foreign-Trade Zones Board

**[Docket 55–95]**

### Foreign-Trade Zone 26—Atlanta, Georgia; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, requesting authority to expand its zone in the Atlanta, Georgia area, within the Atlanta Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 22, 1995.

FTZ 26 was approved on January 17, 1977 (Board Order 115, 42 FR 4186, 1/24/77) and reorganized on April 18, 1988 (Board Order 381, 53 FR 15254, 4/28/88). The general-purpose zone currently consists of a 275-acre site adjacent to Hartsfield Atlanta International Airport (HAIA) in Clayton and Fulton Counties, Georgia.

The applicant is now requesting authority to expand the general-purpose zone to include three separate jet fuel storage and distribution facilities (9.7

acres) at HAIA: the Atlecon Fuel Corporation fuel facility (3 tanks, 1.7 acres); the Epsilon Trading, Inc. fuel facility (10 tanks, 5.7 acres); and, the Airport Group International, Inc. (formerly Lockheed Air Terminal, Inc.) fuel facility (2 tanks, 2.3 acres). The facilities include underground fuel transmission lines, hydrant lines and associated pumps, valves, meters and other equipment. Atlecon is a consortium of airlines that operate international flights at the airport. Epsilon Trading, Inc. is a subsidiary of Delta Air Lines, Inc., and the Airport Group International, Inc. is a subsidiary of Lockheed Martin Corporation. All carriers are permitted to utilize these systems pursuant to a uniformly applied fee structure.

Zone procedures will provide Customs duty-free treatment for jet fuel used in international flights. Some of the jet fuel will come from domestic oil refineries operating under FTZ procedures.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 4, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 18, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Plaza Square North, Suite 310, 4360 Chamblee Dunwoody Road, Atlanta, Georgia 30341

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 27, 1995.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 95–24598 Filed 10–2–95; 8:45 am]

BILLING CODE 3510–DS–P

**[Docket A(32b1)–18–95]**

## Foreign-Trade Zone 172—Oneida County, NY Request for Manufacturing Authority for Low Complexity Manufacturing Group, Inc. (Copier, Laser Printer Components)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Oneida, New York, grantee of FTZ 172, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Low Complexity Manufacturing Group, Inc. (wholly-owned subsidiary of Xerox Corporation) (LCMG), to manufacture certain copier and laser printer components under zone procedures within FTZ 172. It was formally filed on September 20, 1995.

The FTZ Board approved subzone status for the Xerox Corporation in Webster, New York, in 1983 (Subzone 23A, Board Order 220, 48 FR 35479, 8/4/83; grant transferred to FTZ 141 as Subzone 141B on 12/27/90, Board Order 498, 56 FR 675, 1/8/91). In 1988, Xerox was authorized to manufacture laser printers in the subzone (Doc. 13–88, 7/29/88). In 1993, Xerox started up production (similar to existing production activities at the Xerox Webster Subzone 141B) of certain copier and laser printer components to LCMG, which operates a facility within FTZ 172. This activity had been conducted under zone procedures within FTZ SZ 141B, and authority is now being sought to use zone procedures for this activity at FTZ 172.

The LCMG facility in FTZ 172 is currently used for the manufacture and remanufacture of copier and laser printer cartridge replacement units and related components. Certain materials would be sourced from abroad, including: trim blade assembly, corotron wire assembly, magnetic roller, charge scorotron assembly, screws, washers, springs, gears, photoreceptors, filters, packaging, bearings, and toner (duty rates: 0–8.1%). The finished subassemblies include printer cartridges with and without toner fill, mag roll assemblies, and copy machine subassemblies with photoreceptor.

Zone procedures would exempt LCMG from Customs duty payments on the foreign materials used in export manufacture. On domestic shipments, LCMG would be allowed to choose the duty rates that apply to finished cartridges and assemblies (0–3.5%) instead of the rates that would otherwise apply to the foreign materials (0–8.1%). The application indicates that zone procedures for this activity would contribute to the company's overall international competitiveness.

Public comments on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is November 2, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 17, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: September 26, 1995.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 95–24597 Filed 10–2–95; 8:45 am]

BILLING CODE 3510–DS–P

# International Trade Administration

**[A–307–801; C–307–802]**

## Aluminum Sulfate From Venezuela, Revocation of the Antidumping and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of revocation of antidumping and countervailing duty orders.

**SUMMARY:** The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping and countervailing duty orders on aluminum sulfate from Venezuela because the orders are no longer of any interest to domestic interested parties.

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

**FOR FURTHER INFORMATION CONTACT:** Matthew Rosenbaum or Michael Panfeld, Office of Antidumping Compliance (telephone: (202) 482–0198), or Brian Albright, Office of Countervailing Compliance (telephone: (202) 482–2786), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department may revoke an antidumping or countervailing duty order if the Secretary concludes that the order is no longer of interest to domestic

interested parties. We conclude that there is no interest in an antidumping or countervailing duty order when no interested party has requested an administrative review for five consecutive review periods and no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii) and 355.25(d)(4)(iii)).

On November 25, 1994, the Department published in the Federal Register (59 FR 60604 & 60608) its notices of intent to revoke the antidumping duty order (December 15, 1989) and the countervailing duty order (December 19, 1989) on aluminum sulfate from Venezuela. Additionally, as required by 19 CFR § 353.25(d)(4)(ii) and 355.25(d)(4)(ii), the Department served written notice of its intent to revoke these orders on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In these cases, we received no requests for review for five consecutive review periods. Furthermore, as discussed below, no domestic interested party, as defined under § 353.2(k)(3), (k)(4), (k)(5), or (k)(6) and 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Section 771(4)(A) of the Act defines ''industry'' generally as domestic producers of the like product. Likewise, the regulations define domestic interested parties as producers of the like product in the United States (i.e., the industry), as well as U.S. sellers (non-retail) of the industry's products and the industry's unions and associations. 19 C.F.R. §§ 353.2(k)(3), (4), (5) and (6); 355.2(i)(3), (4), (5) and (6).

Section 771(4)(C) of the Act further provides that ''[i]n appropriate circumstances, the United States, for a particular product market, may be divided into two or more markets and the producers within each market *may be treated as if they were a separate industry*.* * *'' (Emphasis added). In such regional industry cases, the International Trade Commission (ITC) may find injury to the regional industry, even if the domestic industry as a whole is not injured. *Id*. In accordance with section 771(4)(C), the orders on aluminum sulfate from Venezuela were issued on the basis of the ITC's determinations that producers in Puerto Rico constituted a separate, regional industry, and that the regional industry was injured by dumped and subsidized imports.

Because the regulatory definition of domestic interested parties is drawn from the statutory definition of the industry, it follows that, in a regional industry case, domestic interested parties are the producers of the like product that are located in the region (i.e., the industry), as well as the U.S. sellers, unions and associations for that regional industry. This definition of domestic interested parties accurately defines those who are part of the industry found to have been injured and who, therefore, may have an interest in whether the orders are revoked. Accordingly, for purposes of evaluating objections to revocation of these orders, domestic interested parties are defined as producers or sellers of the like product located in Puerto Rico, as well as the unions and associations for that regional industry.

On December 29, 1994, General Chemical Corporation, a U.S. producer of aluminum sulfate, objected to revocation of the orders. However, because General Chemical Corporation does not produce the like product in Puerto Rico, it does not fall within the definition of domestic interested parties with standing to object to revocation of these orders. Based on these facts, we have concluded that the antidumping and countervailing duty orders on aluminum sulfate from Venezuela are no longer of any interest to domestic interested parties. Accordingly, we are revoking these orders in accordance with 19 CFR § 353.25(d)(4)(iii) and 355.25(d)(4)(iii).

*Scope of the Order*

Imports covered by the revocation are shipments of aluminum sulfate from Venezuela. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 2833.22.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

Revocation of the antidumping duty order applies to all unliquidated entries of aluminum sulfate from Venezuela entered, or withdrawn from warehouse, for consumption on or after December 1, 1994. Entries made during the period December 1, 1993 through November 30, 1994, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

Revocation of the countervailing duty order applies to all unliquidated entries of aluminum sulfate from Venezuela entered, or withdrawn from warehouse, for consumption on or after January 1, 1995. Entries made during the period January 1, 1994, through December 31, 1994, will be subject to automatic assessment in accordance with 19 CFR 355.22(g). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d) and 355.25(d).

Dated: September 26, 1995.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–24602 Filed 10–2–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[A–588–032]**

## Large Power Transformers From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On July 27, 1995, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from Japan. These final results of review cover one manufacturer/exporter of this merchandise. The review period is June 1, 1993, through May 31, 1994. The review indicates that no shipments of the subject merchandise took place during the review period. Although we gave interested parties an opportunity to comment on the preliminary results, we did not receive any comments.

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

**FOR FURTHER INFORMATION CONTACT:** Andrea Chu, Kris Campbell or Michael Rill, 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) 482–4733.

**SUPPLEMENTARY INFORMATION:**

Background

On July 27, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (37 FR 11773, June 14, 1972) on large power transformers from Japan in the Federal Register (57 FR 53468). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term ''transformers'' includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Fuji Electric Co., Ltd. (Fuji). The period of review is June 1, 1993, through May 31, 1994.

Final Results of Review

Although we gave interested parties an opportunity to comment on the preliminary results, we did not receive any comments. Because Fuji reported, and the Department verified through the Customs Service, that Fuji made no shipments to the United States during the period of review, a cash deposit rate of 5.90 percent, which is Fuji's rate from the final results of the last review period in which Fuji made shipments, will remain in effect for Fuji.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise, and (4) the cash deposit rate for all other manufactures or exporters will continue to be 10.63 percent (*see Large Power Transformers from Japan; Final Results of Antidumping Duty Administrative Review,* 59 FR 44498, August 23, 1993).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 20, 1995.

Paul L. Joffe,

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 95–24601 Filed 10–2–95; 8:45 am]

**BILLING CODE 3510–DS–P**

## Georgia State University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 95–047. *Applicant:* Georgia State University, Atlanta, GA 30303. *Instrument:* Laser Ablation System, Model 266. *Manufacturer:* Finnigan MAT, United Kingdom. *Intended Use:* See notice at 60 FR 33190.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 95–24599 Filed 10–2–95; 8:45 am]

**BILLING CODE 3510–DS–F**

## University of Rhode Island, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 95–028. *Applicant:* University of Rhode Island, Narragansett, RI 02882. *Instrument:* Chlorophyll Fluorescence Measuring System, Model PAM 101. *Manufacturer:*

Heinz Walz GmbH, Germany. *Intended Use:* See notice at 60 FR 24838, May 10, 1995.

*Comments:* None received. *Decision:* Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, could have been made available to the applicant without excessive delay within the meaning of Subsection 301.5(d)(4) of the regulations at the time the foreign article was ordered (February 8, 1995).

*Reasons:* Subsection 301.5 (d)(4), of the regulations provides as follows:

''*Excessive delivery time.* Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. ... In determining whether the difference in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.''

In response to a purchase order dated November 16, 1993, a domestic manufacturer quoted an instrument with a July 15, 1994 delivery schedule. The foreign manufacturer quoted delivery within 6 weeks of initial order. At the time of order (February 8, 1995), the foreign article was a standard catalog instrument, several of which had already been constructed, tested, and delivered. The instrument proposed by the domestic manufacturer was to be a standard catalog instrument requiring modification to accommodate the applicant's needs.

Problems on the part of the domestic manufacturer delayed the delivery schedule, first to January 1995, then to July 1995. As a result, the applicant declined purchase of the domestic instrument. The applicant identified important funding constraints (requiring purchase of the instrument by April 1995) which precluded purchase of the domestic instrument. Subsequently, the applicant claims that the domestic company had gone out of business.

The National Institutes of Health in its memorandum dated July 11, 1995, advised that although an acceptable domestic source had been identified, it was in the process of developing the instrument and to date had manufactured no instrument for delivery.

Accordingly, we find that the domestic manufacturer's inability to deliver a comparable instrument within the time required by the applicant's project funding requirements amounts to ''excessive delivery'' within the meaning of 301.5(d)(4). A delay of 6 months or more would have seriously impaired the accomplishment of the applicant's purposes.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 95–24600 Filed 10–2–95; 8:45 am]

BILLING CODE 3510–DS–F

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and OMB Control Number:* Air Force Academy Precandidate Questionnaire; USAFA Form 149; OMB Control Number 0701–0087.

*Type of Request:* Expedited Processing—Approval date requested: Not later than 30 days following publication in the Federal Register.

*Number of Respondents:* 11,250.

*Responses per Respondent:* 1.

*Annual Responses:* 11,250.

*Average Burden per Response:* 24 minutes.

*Annual Burden Hours:* 4,500.

*Needs and Uses:* The information collected hereby, is utilized in the screening process to conduct a preliminary assessment of a candidate's eligibility status, qualifications, and prospects for formal application and selection for entry into the United States Air Force Academy.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 27, 1995.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–24465 Filed 10–2–95; 8:45 am]

BILLING CODE 5000–04–P

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and OMB Control Number:* Unescorted Entry Authorization Certificate; Air Force Form 2586; OMB Control Number 0701–0042.

*Type of Request:* Expedited Processing—Approval date requested: Not later than 30 days following publication in the Federal Register.

*Number of Respondents:* 20,000.

*Responses per Respondent:* 1.

*Annual Responses:* 20,000.

*Average Burden per Response:* 3 minutes.

*Annual Burden Hours:* 1,000.

*Needs and Uses:* The information collected hereby, is utilized to administer the physical security program on military installations world-wide. It enables commanders to make informed decisions in allowing unescorted entry of personnel into controlled and restricted areas.

*Affected Public:* Business or other for-profit; State, local, or tribal government.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 27, 1995.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–24466 Filed 10–2–95; 8:45 am]

**BILLING CODE 5000–04–P**

## Office of the Secretary

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); FY96 DRG Updates

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of DRG revised rates.

**SUMMARY:** This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1996 under the CHAMPUS DRG-based payment system. It also describes the changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

**EFFECTIVE DATES:** The rates and weights and Medicare PPS changes which affect the CHAMPUS DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 1995.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238. The charge for the Federal Register is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Marty Maxey, Program Development Branch, OCHAMPUS, telephone (303) 361–1227.

To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:** The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 42560).

An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS. HCFA publishes these changes annually in the Federal Register and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

### I. Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS DRG-based payment system.

#### *A. DRG Classifications*

Under both the Medicare PPS and the CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 1995 the CHAMPUS grouper hierarchy logic has been changed so the age split (age (<29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This will result in all neonate tracheostomies and organ transplants to be grouped to MDC 15 DRGs and not to DRGs 480–483 or 495. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1995, HCFA will implement a number of classification changes, including surgical hierarchy changes, revisions to the Major Problem Diagnosis List, and refinements to the Complications and Comorbidities (CC) List. The CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

#### *B. Wage Index and Medicare Geographic Classification Review Board Guidelines*

CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS. In addition, CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals which are redesignated by the Medicare Geographic Classification Review Board.

#### *C. Hospital Market Basket*

We will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to HCFA's September 1 final rule.

#### *D. Outlier Payments*

CHAMPUS is adopting the HCFA outlier thresholds for FY96. The long-stay threshold shall equal the lesser of 3.0 standard deviations or 23 days above the DRG's geometric LOS. Long-stay outliers will be reimbursed the DRG-based amount plus 44 percent of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The cost outlier will be reimbursed the DRG-based amount plus 80 percent of the standardized costs exceeding the threshold. The cost outlier threshold shall be the DRG payment (wage-adjusted but prior to adjustment for indirect medical education) plus a flat rate of $13,800.

#### *E. Capital-Related Costs*

Effective for discharges occurring on or after October 1, 1995, HCFA will increase its inpatient capital-related prospective payment rate. The major factor contributing to the increase is the expiration of the budget-neutrality requirement that mandated estimated payments for capital costs equal 90% of the amount that would have been payable each year from FY 1992 through FY 1995 on a reasonable cost basis. Since CHAMPUS pays for capital-related costs on a retrospective basis based on actual costs instead of prospectively like Medicare, we will reimburse 100% of capital-related costs for CHAMPUS days occurring on or after October 1, 1995.

#### *F. Determination of Number of Beds for Purposes of Calculating the Indirect Medical Education Adjustment*

We will clarify our bed counting policy. We will specify that beds or bassinets in a healthy, or regular, baby nursery are excluded from the bed count

for purposes of calculating the Indirect Medical Education Adjustment.

*G. Payment for Transfer Cases*

CHAMPUS is adopting HCFA's graduated per diem payment methodology for transfer cases. Under this payment methodology, CHAMPUS will pay transferring hospitals, twice the per diem amount for the first day of any transfer stay plus the per diem amount for each of the remaining days before transfer, up to the full DRG amount. For neonatal cases, other than normal newborns, the transferring hospital will be paid twice the per diem amount for the first day of any transfer stay plus 125 percent of the per diem rate for all remaining days before transfer, up to the full DRG amount. This change will allow hospitals to be compensated more appropriately for the treatment they furnish to patients before transfer. Transferring hospitals will continue to be paid in full for discharges classified into DRG 456 (burns, transferred to another acute care facility) or DRG 601 (neonate, transferred less than or equal to 4 days old).

*H. Effect of Change of Ownership on Exclusion of Long-Term Care Hospitals*

CHAMPUS is adopting HCFA's new requirements for certain long-term care hospitals excluded from the PPS. CHAMPUS will clarify its policy by specifying that if a hospital undergoes a change of ownership at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

II. Cost-to-Charge Ratio

For FY 1996, the cost-to-charge ratio used for the CHAMPUS DRG-based payment system will be 0.6003 which is increased to 0.6103 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.6691.

III. Updated Rates and Weights

Tables 1 and 2 provide the rates and weights to be used under CHAMPUS DRG-based payment system during FY 1996 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR Part 199.

IV. Elimination of Physician Attestation Form

CHAMPUS is adopting Medicare's process for eliminating the physician attestation form that requires doctors to certify the accuracy of all diagnoses and procedures before submitting claims for payment to CHAMPUS.

Editorial Note.—This table will not appear in the code of Federal Regulations.

Table 1—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost-Share Per Diem

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

The adjusted standardized amounts are effective for admissions occurring on or after October 1, 1995.

| | |
|---|---|
| National Large Urban Adjusted: | |
| Standardized Amount | $ , . |
| Labor portion | $ , . |
| Nonlabor portion | $ , . |
| National Other Areas: | |
| Standardized Amount | $ , . |
| Labor protion | $ , . |
| Nonlabor portion | $ , . |

The cost-share per diem is effective for inpatient days of care occurring on or after October 1, 1995.

| | |
|---|---|
| Cost-share per diem for beneficiaries other than dependents of active-duty members | $ . |

Dated: September 28, 1995.

L.M. Bynum,

*Alterate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–24577 Filed 10–2–95; 8:45 am]

BILLING CODE 5000–04–M

## Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

**DATES:** October 12–13, 1995 (830 to 400).

**ADDRESSES:** The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. William H.G. Wheeler, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: September 27, 1995.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–24473 Filed 10–2–95; 8:45 am]

BILLING CODE 5000–04–M

## Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents

**AGENCY:** Department of Defense Dependents Schools.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice describes the functions of the Panel. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** November 28–30, 1995.

**ADDRESSES:** Department of Defense Education Activity (DoDEA), 4040 N. Fairfax Drive, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carie Rothenbacher, Special Education Coordinator, DoDEA, (703) 696–4493, extension 151.

**SUPPLEMENTARY INFORMATION:** The National Advisory Panel on the Education of Handicapped Dependents is established under the Individuals with Disabilities Education Act, as amended, (20 U.S.C. 1400 *et seq.*); the Defense Dependents' Education Act of 1978, as amended (20 U.S.C. 927(c)); and DoD Instruction 1342.12, 32 CFR Part 57. The Panel: (1) Reviews information regarding improvements in services provided to students with disabilities in DoDDS; (2) receives and considers the views of various parents, students, individuals with disabilities, and professional groups; (3) when necessary establishes committees for short-term purposes comprised of representatives from parent, student,

professional groups and individuals with disabilities; (4) reviews the finding of fact and decision of each impartial due process hearing; (5) assists in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (6) makes recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (7) comments publicly on rules or standards regarding the education of children with disabilities; (8) submits an annual report of its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: the DoDDS strategic plan, the comprehensive system of personnel development, and the organizational structure of the special education program. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the DoDEA special education coordinator, Dr. Carie Rothenbacher, no later than November 15.

Dated: September 27, 1995.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–24474 Filed 10–2–95; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Air Force

### Acceptance of Group Application Under P.L. 95–202 and DODD 1000.20 ''All U.S. Civilian of the American Field Service (AFS), Who Served Overseas Operationally From April 6, 1917, to January 1918, and November 10, 1941, to August 1945''

Under the provisions of Section 401, Public Law 95–202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the Group Know as: ''All U.S. Civilians of the American Field Service (AFS), Who Served Overseas Operationally From April 6, 1917, to January 1918, and November 10, 1941, to August 1945.'' Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation with 60 day to the DOD Civilian/Military Service Review Board, Secretary of the Air Force, 1535 Command Drive, EE–Wing, 34d Floor, Andrews Air Force Base, MD 20762–7002. Copies of documents or other materials submitted cannot be returned. For further information, contact Mr. Johnston, (301) 981–5329.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–24475 Filed 10–2–95; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Army

### Corps of Engineers; Inland Waterways Users Board

**AGENCY:** Corps of Engineers.

**ACTION:** Notice of open meeting.

**SUMMARY:** In Accordance with 10(a) (2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on October 27, 1995 at the Hyatt Regency Louisville, 320 West Jefferson Street, Louisville, Kentucky 40202 (Tel. 502–587–3434). Registration will begin at 8:30 AM and the meeting is scheduled to adjourn at 4 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

**FOR FURTHER INFORMATION CONTACT:** Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

**SUPPLEMENTARY INFORMATION:** None.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 95–24516 Filed 10–2–95; 8:45 am]

BILLING CODE 3710–92–M

### Privacy Act of 1974; Notice to Add a System of Records

**AGENCY:** Defense Investigative Service, DOD

**ACTION:** Notice to add a systems of records.

**SUMMARY:** The Defense Investigative Service proposes to add a system of records to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The action will be effective without further notice on November 2, 1995, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Defense Investigative Service, Chief, Information and Public Affairs Office, 1340 Braddock Road, Alexandria, VA 22314–1651.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Hartig at (202) 475–1062.

**SUPPLEMENTARY INFORMATION:** The Defense Investigative Service's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the above address.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, was submitted on September 19, 1995, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: September 28, 1995.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**V5–04**

**SYSTEM NAME:**

Counterintelligence Issues Database (CII-DB).

**SYSTEM LOCATION:**

The central database and all terminals will be located at the Defense Investigative Service Headquarters, Counterintelligence Office (CIO), Issues Section, 1340 Braddock Place, Alexandria, VA 22314–1651.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons of Counterintelligence interest in the following categories: Military personnel who are on active duty; applicants for enlistment or appointment; members of Reserve units; National Guard members; DOD civilian personnel, who are paid with appropriate or non appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DOD information or installations; Red Cross; ROTC cadets; former military personnel and individuals residing on, have authorized official access to, or conducting, operating any business or other functions at any DOD installation or facility.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records involving either suspected or actual Counterintelligence (CI) issues detected in Personnel Security Investigations (PSI) or Industrial Security Administrative Inquires (AI). The database will include; Subject name, title, origin of the issue, type of action, type of issue, agent's name, company name, target technology, country of origin and miscellaneous agents notes and recommendations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Department of Regulations; E.O. 10450, Security Requirements for Government Employment; DOD Directive 5200.2, Department of Defense Personnel security Program; DOD Dir 5200.27 (Section IV A and B), Acquisition of information concerning Persons and organizations not affiliated with the DOD; DOD Dir 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP-ESI program for contractor employees.

**PURPOSE(S):**

Provides a central database to document, refer, track, monitor and evaluate CI indicators/issues surfaced during PSI and through AIs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Computerized database, paper records, microfilm, diskettes, are maintained at the CIO.

**RETRIEVABILITY:**

Information in the automated system is retrieved through any entry in the data base to include name and file number.

Paper files are retrieved by name or file number.

**SAFEGUARDS:**

Paper records are contained and stored in regulation safes , filing cabinets and on magnetic tape which is located in a secure area with limited access. The database is maintained in secure office space with password entry to the system. Access is provided on a need to know basis only.

**RETENTION AND DISPOSAL:**

Automated records are maintained for 15 years. CI paper records relating to the automated system and not associated with a PSI will be retained for one year; Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed.

Information within the purview of DOD Directive 5200.27 will be retained no longer than one year.

**SYSTEM MANAGER(S) AND ADDRESS:**

Defense Investigative Service, Deputy Director(s) (Industrial Security and Investigations), 1340 Braddock Place, Alexandria, VA. 22314–1651.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Investigative Service, Information and Public Affairs Office, 1340 Braddock Place, Alexandria VA 22314–1651.

Requesters should provide full name and any former names used, date and place of birth, and Social Security Number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Investigative Service, Information and Public Affairs Office, Alexandria, VA 22314–1651.

**CONTESTING RECORDS PROCEDURES:**

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DIS Regulation 01–13; 32 CFR part 321;or may be obtained from the Defense Investigative Service, Information and Public Affairs Office, 1340 Braddock Place, Alexandria, VA 22314–1651.

**RECORD SOURCE CATEGORIES:**

Federal, State and local law enforcement/intelligence agencies; Industrial Security Administrative inquiries and Personnel Security Investigations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Portions of this system may be exempt pursuant to 5 U.S.C. 552a (k) (1), (k)(2), (k)(3), and (k)(5), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

[FR Doc. 95–24472 Filed 10–2–95; 8:45 am]

BILLING CODE 5000–04–F

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## Department of the Navy

## Record of Decision for the Homeporting of Seawolf Class Submarines on the East Coast of the United States

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to homeport the SEAWOLF class submarine at the Naval Submarine Base (SUBASE) New London, Groton, CT and to implement required dredging of the Thames River to provide safe access.

Up to three SEAWOLF class submarines will be homeported at the SUBASE replacing three existing homeported submarines resulting in no net increase in submarine or personnel loading at the SUBASE. Dredging will deepen the access channel from 35 ft to 39 ft below mean low water (MLW) in the Thames River from the Gold Star (I–95 Highway) Bridge to pier 17 at the SUBASE. Dredging will also occur from the channel to piers 8 and 10, which are designated as the SEAWOLF home port piers, and for access to pier 17 (located up-river from piers 8 and 10) to provide for submarine maintenance. Up to three berths at piers 8 and 10 will be deepened to 42 feet below MLW. The entire existing width of the navigation channel will be dredged from the I–95 bridge to the south end of the SUBASE. This area has been determined to contain marine sediments which are suitable for unconfined open water disposal. Dredging of the section of the river where sediments contain elevated levels of contaminates will be minimized by limiting the width of the channel to allow only a one way passage of the SEAWOLF class submarine for this short stretch. This 300 foot width will reduce significantly the volume of contaminated sediment being removed. Disposal of a total of 1.1 million cubic yards (CY) of dredged sediment will be at the New London Disposal Site (NLDS) in Long Island Sound.

In 1991, the Navy issued a draft environmental impact statement addressing a proposal to dredge the Thames River to allow access for the

lead SEAWOLF submarine (SSN 21) to conduct preacceptance trial operations from piers 32 and 33 at the SUBASE. At that time, no proposal was made concerning a home port for SEAWOLF Class submarines.

In 1994, President Clinton announced SUBASE New London as the preferred home port for SEAWOLF submarines. This preferred homeporting announcement modified the initial proposed action such that the NEPA process had to be re-initiated. A notice of intent was published in the Federal Register in June 1994, indicating the Navy would prepare a DEIS analyzing the impacts of homeporting SEAWOLF Class submarines at one of three alternative locations: SUBASE New London, Naval Submarine Base Kings Bay, GA, and Naval Station Norfolk, VA. Scoping meetings were held in August 1994 at each alternative home port location.

In February 1995, a Draft Environmental Impact Statement for SEAWOLF Homeporting was distributed to federal, state, and local agencies and elected officials, special interest groups, and interested individuals. Public hearings were held in each alternative home port location in March 1995. Oral and written public comments and Navy responses to those comments were incorporated into a Final Environmental Impact Statement (FEIS) which was distributed to the public for a review period that ended on 25 September 1995.

The primary consequence of implementing the proposed homeporting action is the effect of the removal of approximately 1.1 million CY of sediment from the Thames River and disposal of that material at the NLDS. Some of the sediment (350,000 CY) within the material to be dredged is moderately contaminated with metals and polyaromatic hydrocarbons (PAHs). These sediments require covering with non-contaminated sediment.

Sediments within the project area were tested to determine suitability for open water disposal. Metals, PAHs, polychlorinated biphenyls (PCBs), and pesticides were tested. Test results indicate that there are varying amounts of metals and PAHs in the sediments. No PCBs or pesticides were detected in any of the sediment samples.

Bioaccumulation studies revealed that channel sediments from pier 17 south to the south end of the SUBASE caused statistically significant bioaccumulation of several PAH compounds, zinc, and lead. None of the sediments tested, however, were significantly toxic to sensitive organisms. These sediments are, therefore, suitable for open water disposal provided that adequate capping with clean sediment is done.

Channel sediments from the I–95 bridge to the south end of SUBASE did not exhibit any bioaccumulation or toxicity. Therefore, these sediments are suitable for unconfined open water disposal and will be used as capping material for the contaminated sediments of this project. There is more than enough clean sediment to cover the 350,000 CY of contaminated sediment to guarantee the 50 centimeter cap required by the Army Corps of Engineers and the CT Department of Environmental Protection.

Impacts to water quality, air quality, benthic organisms, and aquatic habitat will briefly occur during dredging and disposal activities. These impacts, however, are not considered significant within the context of the project location and with implementation of specific mitigation measures described herein.

Shore facilities and infrastructure impacts associated with SEAWOLF homeporting at the SUBASE will be minimal because the three SEAWOLF submarines will replace existing fast attack submarines as the older submarines are decommissioned. It is projected that by 1999 there will be 17 submarines homeported at the SUBASE, including 2 of the 3 SEAWOLF class submarines, compared to 24 submarines currently homeported there. Consequently, no change or addition in submarine support services, ordnance storage, supply facilities, magnetic signature measurement facilities, or intermediate maintenance facilities will be required at the SUBASE to support SEAWOLF homeporting. The declining submarine loading will allow SEAWOLF personnel and their dependents to occupy existing bachelor and family housing. Personnel support services are adequate to support the SEAWOLF crews. Training facilities already exist at SUBASE. Selection of another home port location would require replication of these facilities. Utility consumption is expected to decline corresponding to a reduction in the total number of submarines homeported at the SUBASE.

Considering all factors, the preferred and selected alternative is homeporting at SUBASE New London. In the narrower context of environmental factors only, the alternative that would incur marginally fewer impacts would be that of homeporting at Naval Station Norfolk where minimal dredging would be required and where dredged material disposal occurs at Craney Island. That alternative was not selected because it would cost substantially more and does not provide for the operational readiness, training, and synergy of compatible functions provided at SUBASE New London. This conclusion is also supported by the Navy's ability to mitigate impacts at New London to below the level of significance.

Comments Received on the FEIS

Ten comment letters were received following publication of the FEIS. Several of these letters simply indicated the writer's preferences. Others presented substantive comments dealing with mitigation measures, storm effects on the NLDS, and potential alternatives for either homeporting the SEAWOLF or for the disposal of the dredged sediment that the commenters believed had not been adequately addressed in the FEIS.

Studies of major storm events have been conducted at the NLDS. A comparison of bottom topography from 1985 to 1992, a period that included two hurricanes, demonstrated that little, if any, change in topography occurred at the NLDS.

Four alternatives for homeporting or disposal of dredged material were addressed in comment letters: (1) Use of the Naval Undersea Warfare Center (NUWC) New London for SEAWOLF homeporting; (2) in-channel ''borrow pit'' disposal of dredged sediment; (3) ''washing'' of dredged material to remove contaminates; and (4) sediment dewatering to reduce the overall volume of dredged material requiring disposal. All of these suggested alternatives were specifically addressed in the EIS, with the exception of in-channel borrow pit disposal. The latter is a variation of capping, a process that was thoroughly addressed in the EIS. While addressed in the EIS, none of these suggested alternatives were considered reasonable alternatives and therefore were not discussed in great detail. The comment letters did not identify any substantive environmental information concerning the proposed action or suggested alternatives that had not already been considered during the EIS process. Consequently, as discussed below, it was determined that none of the suggested alternatives warranted additional discussion in the EIS.

The NUWC alternative was discounted as a practicable long-term SEAWOLF home port because of incompatible existing functions and land use and because the facility has been considered for closure as part of the Base Closure and Realignment Act process. In fact, after careful analysis the Department of Defense recommended closure of the NUWC facility at New London except for existing piers. Although Congressional direction for

closure will not be final until 28 September 1995, there is no scheduled Congressional action that would reject the BRAC–95 Commission recommendations and such an action is extraordinarily remote. The Navy will retain the pier where the SEAWOLF submarine could be berthed. The necessary shore facilities including ordnance loading capability, public works, administration, security and personnel support, are not available on site nor will sufficient land be retained to construct them. None of the existing submarine maintenance facilities would be accessible unless the Thames River channel was dredged as proposed in the preferred alternative. Consequently, construction of new submarine maintenance facilities would also be required. Special legislation would be required to reopen the closed NUWC facility and to develop facilities and infrastructure to support homeporting. Locating the SEAWOLF home port at the NUWC facility would, therefore, require the Navy to maintain duplicate submarine support facilities within three miles of each other.

This duplication is not only inefficient but would result in increased environmental impacts. Duplicate facilities would increase air emissions, water discharges, and require another temporary storage facility for hazardous waste. The cost of providing these duplicate support facilities at NUWC and maintaining those facilities over the 30 year life of the SEAWOLF submarine would clearly be excessive. As described in the EIS, the use of NUWC as a home port is not a reasonable alternative.

The in-channel borrow pit alternative would require removing contaminated sediments from the Thames River channel and placement in a ''borrow pit'' dug in another section of the River. While this technique would eliminate the disposal of contaminated sediment at the NLDS, it would result in dredging of substantially more sediments and at a higher disposal cost. The dredging associated with the SEAWOLF project is designed to increase the depth of the Thames River channel and the areas adjacent to the piers. The channel would be dredged to a depth of 39 feet below MLW. A ''borrow pit'' of sufficient size and depth would have to be dug to accept the 350,000 CY of contaminated sediments plus the necessary cap and still allow a minimum depth of 39 feet below MLW. There are no existing borrow pits or depressions in the Thames River that could be used.

Based upon the Army Corps of Engineers Boston Harbor dredging, it is estimated that use of a borrow pit would increase the amount of dredging by 1 million cubic yards. While the borrow pit is being dug, the sediments that are removed must be stockpiled on land or on barges in the Thames River. As an average barge can hold approximately 4,000 CY of sediment, there is not enough space to accommodate the large number of barges that would be needed to hold contaminated sediments and the sediments removed from the borrow pit; nor is there an adequate land site nearby to use for stockpiling. Once a borrow pit is placed in the Thames River, it would preclude any future deepening of the channel for any use—federal, state, or private. This additional dredging requirement, commitment of a sizeable in-channel area to initial (versus maintenance) dredging, and the logistical problems associated with completing the entire dredging requirement within the four month dredging season, makes this approach impracticable. Additional impacts to water quality in the river would result from more disturbance of sediment. Cumulative impacts to fish and benthos would be magnified because dredging would occur from October-January in the multiple years necessary for project completion. Cost of this approach would be excessive. Assuming similar conditions to the Boston Harbor In-channel option, the increased volumes, handling, and open water disposal to create cells, import clean sand and place contaminated sediment, would escalate the total cost for the SEAWOLF dredging project from approximately $4 million to approximately $23 million. Finally, given that there is a permitted in-water disposal site available for this project, it is not likely that the required permits could be obtained from the CT Department of Environmental Protection to allow this project to proceed this year, if at all.

Soil washing utilizes a cleansing process to remove contaminants from dredge material. The comment letter asserts that the ''cleaned'' sediments could be placed in an upland facility or an open water site without the need for capping. While this technique eliminates the disposal of contaminated sediment at the NLDS, it involves the disposal of contaminants at upland sites. The contaminants would be concentrated as a result of the washing process, would be subject to regulation under RCRA, and may not be suitable for land disposal. Mechanical soil washing is a recognized process, but it has not been effective in removing petroleum-based contaminants such as polyaromatic hydrocarbons, especially those in fine sediments. Mechanical washing, enhanced by use of chemical agents, is a relatively new process. This enhanced soil washing technique has never been attempted on a project the size of the SEAWOLF project. Consequently, technical and timing difficulties must be anticipated which could make completing the required dredging within the four month dredging season impracticable. Chemically enhanced soil washing has been used only on smaller projects at a cost of $35–$45 per cubic yard, excluding the cost for transportation of treated sediment and landfill fees. As discussed in the EIS, costs associated with a project could approach $100 per cubic yard.

Sediment dewatering involves placing sediments in a barge or at an upland site and allowing water to run off, thereby reducing the overall volume of sediment. The EIS investigated this process and concluded that the volume of the sediments to be dredged precludes the use of barges for sediment dewatering. Time requirements to develop and permit a suitable near shore upland site to be used for sediment dewatering were estimated to take as long as three years. CT requires a minimum of 18 months of monitoring at a land site before any materials can be deposited there. The dredging process is also more time-consuming and could not be completed during the limited dredge window for the Thames River, making this alternative impracticable for the SEAWOLF project. Sediments are double or triple handled as the sediment is moved from dredge bucket, to barge, to truck, and finally to the land disposal site. All of these factors make the costs associated with dewatering significantly greater than disposal at the NLDS.

Mitigation

The Navy will employ the following mitigation measures to ensure minimization of environmental impacts associated with dredging and disposal operations: (1) Use of an enclosed clamshell dredge bucket to minimize spillage of dredge sediment from dredging operations, (2) adherence to the ''no barge overflow'' requirement, (3) capping of the contaminated dredged sediment with clean sediment in accordance with the Army Corps of Engineers permit requirements [The amount of capping material available in the project exceeds that necessary to ensure a 50 cm cap and should result in a thicker cap in most locations.], (4) observance of the seasonal restrictions on dredging in the Thames River, (5) implementing an intensive series of

hydrographic monitoring of the disposal site during and after disposal operations to ensure proper placement of sediments, (6) use of sediment profile (underwater) photography of the disposal mound to ensure proper placement of sediments, (7) use of precision navigation equipment and a taut wire buoy at the disposal site to accurately locate the barge discharge point at the disposal site, and (8) presence of a barge inspector, certified by the Army Corps of Engineers, on each and every barge that takes dredged materials to the disposal site.

With the above mitigation measures, the Navy believes impacts to the Thames River and Long Island Sound marine environments will be minimized to the maximum extent practicable.

In addition to the specific mitigation measures set out above, the Navy will: (1) Encourage the Army Corps of Engineers to select a discharge point where a depression in the bottom already exists; (2) encourage the Army Corps of Engineers to dispose of clean dredged materials from future area projects at the NLDS; (3) pursue development of a post-disposal monitoring program in cooperation with the EPA and the Army Corps of Engineers; and (4) offer interested environmental groups the opportunity to cooperatively provide an independent observer on barges carrying dredged material for disposal.

In accordance with the Clean Air Act and General Conformity Rule requirements, an air quality review has been conducted for the proposed dredging. It has been determined that this action is in compliance with 40 CFR Part 63 (Determining Conformity of General Federal Actions to State or Federal Implementation Plans) and satisfies the requirements of Section 176(c) of the Clean Air Act (42 USC 7506). Accordingly, the proposed action in the Thames River conforms to the state implementation plan's purpose of eliminating or reducing the severity and number of violations of the federal ambient air quality standards and achieving expeditious attainment of those standards.

Section 404 of the Federal Water Pollution Control Act (FWPCA) requires authorization from the Army Corps of Engineers for the discharge of dredged material into ''waters of the United States''. Section 404 regulations prohibit the use of any disposal site in open water when its use would result in adverse effects on water quality, shellfish beds, fisheries and wildlife, or recreational areas. The Navy has determined that the proposed dredging would not have significant impacts and has applied for a section 404 permit for this project.

Section 401 of the FWPCA requires that any party proposing to engage in an activity which may affect water quality must obtain state water quality certification. Certification will not be granted unless it has been determined that the proposed activity will not violate state water quality standards. The Navy has received the requisite Section 401 permit from the CT Department of Environmental Protection for SEAWOLF homeporting. The NLDS is partially located in the State of New York, but, under EPA regulations, a water quality certificate is only required from the state having jurisdiction over the location where the dredged materials will be discharged. Disposal of dredged material will take place wholly within waters of the state of Connecticut and there will be no direct discharge of dredged material into New York waters, therefore a New York Water Quality Certificate is not required for this project.

In accordance with the Coastal Zone Management Act, the Navy has requested and received concurrence with its determination of coastal zone consistency for the SEAWOLF homeporting project from the CT Department of Environmental Protection. Although the NLDS lies partially within the waters of the State of New York, the Navy has determined that the proposed action will not affect the coastal resources of the State of New York, and included a negative determination to that effect in the EIS.

Pursuant to Executive Order 12898 on Environmental Justice, potential environmental and economic impacts on minority and low-income persons and communities were assessed. Any impacts caused by the SEAWOLF homeporting, particularly the dredging and disposal of dredged material, will be experienced equally by all groups within the overall regional population. Because no long-term negative environmental impacts are expected from the proposed action, no particular minority or low income segment of the population would be disproportionately affected. There is not anticipated to be any likelihood for minority or low income individuals to be subjected to adverse environmental or health risks.

In accordance with the National Historic Preservation Act, the Navy concluded that it is unlikely that there are any submerged ship wrecks in the area to be affected by the dredging or disposal operations. The State Historic Preservation Officer has concurred with this finding.

Questions regarding the Final Environmental Impact Statement prepared for this action may be directed to Mr. Robert Ostermueller, Head, Environmental Planning, Northern Division Naval Facilities Engineering Command, 10 Industrial Highway, Lester PA 19113, telephone (610) 595–0759; fax (610) 595–0778.

Dated: September 27, 1995.

Duncan Holaday,

*Deputy Assistant Secretary of the Navy (Installations and Facilities).*

[FR Doc. 95–24502 Filed 10–2–95; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT95–61–000]**

### Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective October 23, 1995:

Second Revised Volume No. 1
Fifth Revised Sheet No. 11
Original Volume No. 2
Fifteenth Revised Sheet No. 4E
First Revised Sheet No. 1400
First Revised Sheet No. 1412

Columbia states that these tariff sheets are being filed to cancel in their entirety Rate Schedules X–121 and X–122, which embody separate agreements between Columbia and Carnegie Natural Gas Company (Carnegie) as follows:

Rate Schedule X–121 for a transportation of natural gas agreement authorized under Docket No. CP84–217 (27 FERC 61,075 (1984));

Rate Schedule X–122 for a transportation of natural gas agreement authorized under Docket No. CP84–214 (27 FERC 61,075 (1984)).

Columbia states that a copy of this filing was served upon Carnegie and have been mailed to all holders of Columbia's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 4, 1995. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–24500 Filed 10–2–95; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. CP95–779–000]**

## Gateway Pipeline Company, Complainant v. Western Gas Interstate Company, Respondent; Notice of Complaint

September 27, 1995.

Take notice that on September 26, 1995, Gateway Pipeline Company (Complainant), 333 North Sam Houston Parkway East, Houston, Texas 77060, filed a complaint in Docket No. CP95–779–000, pursuant to Section 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) against Western Gas Interstate Company (Respondent) to immediately cease and desist all activity related to its application filed in Docket No. CP95–606–000, as amended. Complainant states that this pleading is in response to respondent's on-going construction activities related to the proposed interstate transmission facilities identified in the above-mentioned proceeding, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that respondent has already constructed the permanent delivery point facilities for which it currently has pending an application for construction authority in Docket No. CP95–606–000, and it is now in the process of constructing the associated permanent mainline transmission facilities for which it has pending an application in Docket No. CP95–606–001. Complainant states that respondent began construction of these mainline facilities on Friday, September 22, 1995, and as of Sunday, September 24, has already strung, welded and buried some four miles of mainline transmission pipeline. Complainant states that at respondent's current pace, it should complete the construction and installation of nearly all of the 16-mile mainline by the end of the week ending September 30, 1995, and the facilities should be operational within three weeks.

Complainant asserts that respondent has no authority to construct these facilities, because the amendment to the pending application filed in Docket No. CP95–606–001 is still pending before the Commission, and the Commission is in the process of conducting an environmental assessment of respondent's proposal.

Complainant also asserts that respondent's construction activities therefore appear to violate Section 7(c) of the Natural Gas Act (NGA), which, among other things, requires natural gas companies to secure prior approval of proposals to construct and operate facilities used for the transmission of gas in interstate commerce.

Complainant further asserts that by respondent having unilaterally decided to begin constructing its interstate transmission facilities without obtaining prior Commission approval of its application, respondent has now in effect told the Commission: ''Never mind''; respondent never really needed to file anything because these are NGPA Section 311 facilities.[1]

Complainant states that the Commission should reject Western's transparent and flagrant attempt to rationalize, on a *post hoc* basis, citing what it considers respondent's ''no-holds-barred'' effort to get its pipeline in the ground. In its petition, complainant states that these facilities are not even arguably legitimate 311 facilities—''facilities utilized solely for transportation authorized under Section 311(a) of the NGPA'' [2]—since no intrastate or LDC entity is involved in the proposed transportation transaction to Seaboard.[3]

Further, complainant states that respondent's FERC filings have evidence a pronounced ''make-it-up-as-we-go'' flavor, geared toward getting its pipeline in the ground as soon as possible, with as little Commission scrutiny as it can get by with. Complainant further states that respondent is not content to wait for a Commission order on its abbreviated application and has decided simply to construct its pipeline, apparently hoping that it can cure any FERC problems after its pipeline is up and running. Complainant argues that the Commission should not tolerate respondent's disregard of Commission authority.

Complainant requests that, in order to prevent respondent from completing the construction and installation of its entire project and to preserve the *status quo* pending Commission investigation of this complaint, the Director of Enforcement issue by telephone a cease and desist order directly to respondent's offices, via telephone, by close-of-business on September 25, 1995, but in no event later than 12 noon September 26, 1995. Complainant also requests that the Commission should (1) institute an investigation into respondent's construction activities related to respondent's application, (2) order respondent to show cause why it should not be held in violation of Section 7(c) of the NGA, and thus subject to penalties under Section 21 of the NGA, including criminal and civil penalties under Sections 21(a) and 21(b), respectively, of the NGA and (3) grant other appropriate relief pursuant to Sections 5 and 16 of the NGA as a result of the requested investigation.

Any person desiring to be heard or to make protest with reference to said complaint should on or before October 4, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint are also due on or before October 4, 1995.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–24487 Filed 10–2–95; 8:45 am]

**BILLING CODE 6717–01–M**

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[1] In the Notice of Withdrawal, respondent attempts to withdraw both its request and abbreviated application, claiming that both of these applications have ''become moot, because [Western] will construct and operate the 15.5 miles of 8″ pipeline and sales tap to the Seaboard Farm (Seaboard) processing plant * * * pursuant to Section 311 of the Natural Gas Policy Act.'' Notice of Withdrawal at 1–2.

[2] 18 CFR 284.3(c).

[3] According to Exhibit I of Western's Abbreviated Application, Seaboard is to be served by Western under a Rate Schedule FT–N transportation contract executed by Seaboard. Nowhere in that contract or in the abbreviated application is there any mention of an LDC or intrastate pipeline ''on behalf of'' entity, the essential element for transportation service to qualify as a Section 311(a) transaction.

**[Docket Nos. RP95–185–000 and RP95–185–001]**

## Northern Natural Gas Co.; Notice of Informal Settlement Conference

September 27, 1995.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on November 1, 1995, at 1 p.m. The conference will continue on November 2, if necessary. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald Heydt at (202) 208–0740 or Robert Young at (202) 208–5705.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–24494 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–443–000]**

## Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waiver of Tariff

September 27, 1995.

Take notice that on September 22, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks a waiver of the provisions of Section 12.3 of the General Terms and Conditions addressing priority of service during curtailment, Section 14.1 of the General Terms and Conditions addressing nomination procedure for gas deliveries, and Section 10 of Rate Schedule TF–1 and Section 4 of Rate Schedule T–1 addressing reservation charge adjustments, and waivers of any other tariff provisions necessary to allow Northwest to provide unscheduled emergency service to Exxon Company, U.S.A. (Exxon) at its Shute Creek plant with priority over scheduled firm and interruptible services, even during periods of curtailment or declared entitlement, in order to prevent the venting of untreated gas from the plant which contains lethal amounts of hydrogen sulfide and could create a safety hazard for Exxon's field employees and the public.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 4, 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. 95–24492 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–419–002]**

## Pacific Gas Transmission Co.; Notice of Compliance Filing

September 27, 1995.

Take notice that on September 25, 1995, Pacific Gas Transmission Company (PGT), made a compliance filing submitting certain proposed revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1. PGT states that the proposed revised tariff sheets implement minor typographical corrections and clarifications in PGT's update of its Index of Shippers.

PGT further states that a copy of this filing has been served upon the official service list established by the Secretary in this proceeding.

PGT requests waiver of the Commission's regulations to allow the proposed revised tariff sheets to become effective September 15, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 4, 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. 95–24493 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–445–000]**

## South Georgia Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995, South Georgia Natural Gas Company (South Georgia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective October 1, 1995:

Second Revised Sheet No. 15
Second Revised Sheet No. 33
Second Revised Sheet No. 34
Second Revised Sheet No. 114

South Georgia states that the purpose of this filing is to (1) Revise its nomination procedures, in response to feedback received from its shippers who utilize the midday nomination process, to allow midday nominations to remain in effect, i.e. to roll, during the month, unless changed by the shipper, and (2) to provide for shippers to prioritize their receipt and delivery nominations in case of scheduling cuts. South Georgia submits that both of these changes will enhance its nomination and scheduling process. Accordingly, South Georgia has requested all waivers necessary to make these changes effective October 1, 1995.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 4, 1995. Protests will not be considered by the Commission in determining the 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. 95–24490 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP95–444–000]**

## Southern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995, Southern Natural Gas Company (Southern) tendered for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective October 1, 1995:

Third Revised Sheet No. 126
Third Revised Sheet Nos. 236–237
First Revised Sheet No. 249
Fourth Revised Sheet No. 404
Fourth Revised Sheet No. 406

Southern states that the purpose of this filing is to (1) revise its nomination procedures, in response to feedback received from its shippers who utilize the midday nomination process, to allow midday nominations to remain in effect, i.e., to roll during the month, unless changed by the shipper, and (2) to update its Index of Purchasers to reflect a permanent, partial release of capacity. Southern has requested all waivers necessary to make these changes effective October 1, 1995.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests should be filed on or before October 4, 1995. Protests will not be considered by the Commission in determining the 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. 95–24491 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–2–29–000]**

## Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff Third Revised Volume No. 1 enumerated in Appendix A attached to the filing.

Transco states that the instant filing is submitted pursuant to Section 44 of the General Terms and Conditions of Transco's Volume No. 1 Tariff which provides that Transco will reflect in its rates the costs incurred for the transportation and compression of gas by others (hereinafter ''TBO''). Section 44 provides that Transco will file to reflect net changes in its TBO rates at least 30 days prior to the November 1 effective date of each annual TBO filing. Transco states that Appendix B attached to the filing, sets forth Transco's estimated TBO demand costs for the period November 1, 1995 through October 31, 1996, and the derivation of the TBO unit rate reflected on the tariff sheets included in Appendix A.

Transco states that it is serving copies of the instant filing to 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 95–24488 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. GT95–66–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–267, X–268, X–271, X–277 and X–278 and to convert such service to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 1, 1995.

Transco states that the rates applicable to the converted services are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on Sheet No. 40A to Transco's Third Revised Volume No. 1 Tariff. Sheet No. 40A sets forth charges applicable to Incremental Leidy Line Annual Firm Transportation which has been converted from individually certificated Section 7(c) firm transportation service to service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to Con Ed, Delmarva, LILCO, NUI, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 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. 95–24495 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. GT95–65–000]**

## Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The

proposed effective date of such tariff sheets is November 1, 1995.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–316, X–318 and X–324 and to convert such service to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 1, 1995.

Trasnco states that the rates applicable to the converted services are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on Sheet No. 40B to Transco's Third Revised Volume No. 1 Tariff. Sheet No. 40B sets forth the charges applicable to Niagara Import Point Project-System Expansion annual firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to NUI, Piedmont and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 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. 95–24496 Filed 10–2–95; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. GT95–64–000]**

## Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–286 and to convert such service to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 1, 1995. In that regard, Transco and its APEC shippers have agreed that, as part of the conversion process, converting APEC shippers will be entitled to elect annual firm transportation service in lieu of seasonal (November 15 through March 31) service. NUI has notified Transco of its election to convert its APEC service to annual firm transportation service.

Transco states that the rates applicable to the converted service are the generally applicable charges under Rate Schedule Ft (including fuel), plus reservation and commodity rate surcharges as set forth on Sheet No. 40E to Transco's Third Revised Volume No. 1 Tariff. Sheet No. 40E sets forth the charges applicable to APEC annual firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to NUI and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 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. 95–24497 Filed 10–2–95; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. GT95–63–000]**

## Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 and Origional Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–294, X–296, X–297, X–303, X–309, X–311 and X–312 and to convert such service to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 1, 1995. Currently, the System Expansion (SEP) service is billed on an annual basis. However, upon conversion to Part 284 Service, Transco, Fort Hill Natural Gas Authority, City of Greenwood, South Carolina, City of Greer, South Carolina, Piedmont Natural Gas Company, Inc., City of Union, South Carolina, United Cities Gas Company, Georgia Division and United Cities Gas Company, South Carolina Division have agreed that the converted SEP service will be billed on a seasonal basis corresonding to the period during which Transco provides SEP service (i.e., November through March). The derivation of the seasonal rates to be billed for the coverted SEP service is set forth in Appendix B attached to the filling.

Trasnco states that Sheet No. 40F to Transco's Volume No. 1 sets forth the charges applicable to SEP firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation service under Transco's blanket certificate and Part 284 of the Commission's regulations

Transco states that copies of the filing are being mailed to NUI, Piedmont and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be

filed on or before October 4, 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. 95–24496 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. GT95–62–000]**

## Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 22, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedule FT–NT and to convert such service to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 1, 1995.

Transco states that the rates applicable to the converted services are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on Sheet No. 40D to Transco's Third Revised Volume No. 1 Tariff. Sheet No. 40D sets forth the charges applicable to FT–NT annual firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to NUI, Piedmont, NAU and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 95–24499 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–119–001]**

## Young Gas Storage Co., Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 27, 1995.

Take notice that on September 25, 1995, Young Gas Storage Company, Ltd. (Young) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

First Revised Sheet No. 5

The proposed effective date of this tariff sheet is June 1, 1995.

Young states that the purpose of Young's filing is to comply with the Commission's order dated September 12, 1995, directing Young to file a tariff sheet within 15 days of the date of the order deleting the ACA surcharge from its tariff.

Young states that copies of this filing were served on its customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 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. 95–24489 Filed 10–2–95; 8:45 am]

BILLING CODE 6717–01–M

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# ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–140237; FRL–4982–5]**

## Access to Confidential Business Information by the New York Department of Environmental Conservation

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, the State of New York Department of Environmental Conservation access to information which has been submitted to EPA under sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than October 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–W5–0040, the State of New York Department of Environmental Conservation will review information directed to EPA under the authority of TSCA, including CBI, and determine the value of such information to its toxics programs. This contractor will produce a paper containing a summary of its findings to be directed to EPA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0040, the identified contractor will require access to information, including CBI, submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the State/contractor toxics facility headquarters located at 50 Wolf Road, Albany, NY 12233.

The contractor will be required to adhere to a modified version of the security provisions included in the EPA *TSCA Confidential Business Information Security Manual.* These

modified provisions do not substantively reduce the level of security afforded TSCA CBI. Copies of the modified version are available from the address referenced above in **FOR FURTHER INFORMATION CONTACT**. Additional information may be secured from Scott Sherlock, EPA staffer assigned to this project at (202) 260–1536; e-mail: sherlock.scott@epamail.epa.gov.

Before access to TSCA CBI will be authorized at the contractor's site, EPA is required to approve the contractor's security certification statement, perform the required inspection of the facility, and ensure that the facilities are in compliance with the modified security provisions. Upon completing review of the CBI materials, the State/contractor will return all these materials to EPA.

Clearance for access to TSCA CBI under this contract may continue 60 days after the date of commencement, unless EPA agrees to extend it, in which case clearance will be extended to 120 days after the date of commencement.

All contractor personnel having access to the TSCA CBI will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Additionally, the contractor has provided assurances in writing that the TSCA CBI protections required under this contract are not inconsistent with any existing State provisions.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: September 27, 1995.

George A. Bonina,

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 95–24585 Filed 10–2–95; 8:45 am]

**BILLING CODE 6560–50–F**

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**[OPPTS–140238; FRL–4982–6]**

## Access to Confidential Business Information by the Georgia Department of Natural Resources

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, the State of Georgia Department of Natural Resources access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than October 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TCSA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–W5–0038, the State of Georgia Department of Natural Resources will review information directed to EPA under the authority of TSCA, including CBI, and determine the value of such information to its toxics programs. This contractor will produce a paper containing a summary of its findings to be directed to EPA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0038, the identified contractor will require access to information, including CBI, submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the State/contractor toxics facility headquarters located at 7 Martin Luther King, Jr. Drive, Atlanta, GA 30334.

The contractor will be required to adhere to a modified version of the security provisions included in the EPA *TSCA Confidential Business Information Security Manual.* These modified provisions do not substantively reduce the level of security afforded TSCA CBI. Copies of the modified version are available from the address referenced above in **FOR FURTHER INFORMATION CONTACT**. Additional information may be secured from Scott Sherlock, EPA staffer assigned to this project at (202) 260–1536; e-mail: sherlock.scott@epamail.epa.gov.

Before access to TSCA CBI will be authorized at the contractor's site, EPA is required to approve the contractor's security certification statement, perform the required inspection of the facility, and ensure that the facilities are in compliance with the modified security provisions. Upon completing review of the CBI materials, the State/contractor will return all these materials to EPA.

Clearance for access to TSCA CBI under this contract may continue 60 days after the date of commencement, unless EPA agrees to extend it, in which case clearance will be extended to 120 days after the date of commencement.

All contractor personnel having access to TSCA CBI will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Additionally, the contractor has provided assurances in writing that the TSCA CBI protections required under this contract are not inconsistent with any existing State provisions.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: September 27, 1995.

George A. Bonina,

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 95–24586 Filed 10–2–95; 8:45 am]

**BILLING CODE 6560–50–F**

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**[FRL–5311–3]**

## Privacy Act of 1974; Debarment and Suspension System of Records

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

**ACTION:** Proposed new Privacy Act system of records.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is publishing a notice for public comment on a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. This system is entitled ''Debarment and Suspension Files''. Additional information on this system is described in the Supplementary Information section of this notice.

**EFFECTIVE DATE:** This proposed action will be effective, without further notice on November 13, 1995, unless comments are received which result in a contrary determination.

**ADDRESSES:** Comments should be addressed to: David M. Sims, Chief Hearing Officer, Office of Grants and Debarment (Mail Code 3901F), U. S. Environmental Protection Agency, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** J.F. Drummond, Jr., Associate Hearing Officer, Office of Grants and Debarment (Mail Code 3901F), U. S. Environmental Protection Agency, Washington, DC 20460. Telephone (202) 260–6316.

**SUPPLEMENTARY INFORMATION:** The purpose of this system of records is to assist EPA in assembling information in order to conduct and document debarment and suspension proceedings to ensure that Federal contracts and Federal assistance, loans, and benefits are awarded to responsible business entities and individuals. The system includes case files and computer generated records developed in connection with initiating suspension and debarment proceedings under Federal Acquisition Regulation (FAR) 9.4 (procurement) and 40 CFR part 32 (nonprocurement), and in rendering interim and final decisions in such proceedings. Case files are comprised of: (1) The official administrative record maintained by hearing officers in EPA's Office of Grants and Debarment (OGD); (2) files compiled by attorneys in EPA's Suspension and Debarment Division (SDD), the Inspector General Division of the Office of General Counsel, and Offices of Regional Counsel in support of suspension and debarment actions; and (3) files developed by SDD to provide documentation for suspension and debarment actions and to conduct audits of compliance agreements. Computer generated records include data regarding categories and status of cases.

This system of records contains records retrievable by the names of businesses and other organizations, as well as by the names of individuals. Only information retrievable by the names of individuals is covered by this Privacy Act notice.

Dated: September 26, 1995.

Sallyanne Harper,

*Acting Assistant Administrator for Administration and Resources Management.*

## EPA—33

### SYSTEM NAME:

Debarment and Suspension Files—EPA/OGD.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

Office of Grants and Debarment, Fairchild Building, 499 South Capitol St., Washington, DC. Records are also located in files maintained by the EPA legal offices in Headquarters and Regions 1 through 10 which recommend suspension and debarment action.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been suspended, proposed for debarment, or debarred from Federal procurement and assistance programs and individuals who have been the subject of agency inquiries to determine whether they should be debarred and/or suspended from Federal procurement and assistance programs.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information on individuals and firms excluded or considered for exclusion from Federal acquisition or assistance programs as a result of suspension or debarment proceedings initiated by EPA. Such information includes, but is not limited to, names and addresses of individuals covered by the system of records, evidence obtained in support of Action Referral Memoranda and Case Closure Memoranda, interim decisions, compliance agreements, audits of compliance agreements, and final determinations. Examples of evidence contained in files include correspondence, inspection reports, memoranda of interviews, contracts, assistance agreements, indictments, judgment and conviction orders, plea agreements, and corporate information. Evidence may include documents containing individuals' Social Security Numbers. Computer generated records include data regarding categories and status of cases.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251 et. seq.; Office of Federal Procurement Policy Act, 41 U.S.C. 401 et seq.; Executive Order 12549 (February 18, 1986); and Executive Order 12689 (August 16, 1989).

### PURPOSE:

The purpose of this system of records is to assist EPA in assembling information on, conducting, and documenting debarment and suspension proceedings to ensure that Federal contracts and Federal assistance, loans, and benefits, are awarded to responsible business entities and individuals.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed for routine uses as follows:

1. To the General Services Administration (GSA) to compile and maintain the ''Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs'' in accordance with FAR 9.404 and 40 CFR 32.500 and 32.505.

2. To organizations suspended, proposed for debarment of debarred in EPA proceedings; to the legal representatives of such organizations; and to the legal representatives of individuals suspended, proposed for debarment or debarred in EPA proceedings.

3. To a Federal, state, or local agency, financial institution or other entity for the purpose of verifying an individual's eligibility for engaging in a covered transaction as defined at 40 CFR 32.200.

4. To Federal, state, or local agencies for the purpose of; (a) assisting them in administering Federal acquisition, assistance, loan and benefit programs or regulatory programs, (b) assisting them in discharging their duties to ensure that Federal contracts and assistance, loans, and benefit programs are awarded to responsible individuals and organizations, and (c) ensuring that Federal, state or local regulatory responsibilities are met.

5. To Federal, state, or local agencies where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract or the issuance of a security clearance, license, permit, grant, or other benefit by EPA or another Federal, state or local agency.

6. To an appropriate Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, permit, or order, where the records indicate on their face or in conjunction with other records a violation or potential violation of the statute, rule, regulation, permit, or order, and the information disclosed is relevant to the matter.

7. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

8. In a proceeding or contemplated proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual

capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to requests for discovery.

9. In response to a subpoena from another Federal agency having the power to issue subpoenas to EPA.

10. To EPA and other Federal agency contractors, grantees, or volunteers who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain the records in accordance with the requirements of the Privacy Act.

11. To the public, upon request, and to publishers of computerized legal research systems, but such disclosures shall be limited to interim or final decisions and settlement agreements.

12. To a member of Congress or a Congressional office in response to an inquiry from that member or office made at the request of the individual to whom the record pertains.

13. To representatives of GSA and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PROCEDURES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; microfiche, discs, computers and other electronic media.

**RETRIEVABILITY:**

Records are retrieved by name of the firm or individual and by file number.

**SAFEGUARDS:**

Records are accessible only by authorized EPA employees and are secured in file cabinets in areas which are locked during non-duty hours. Access to data in computers is restricted to suspension and debarment personnel and other EPA employees with an official need for such information.

**RETENTION AND DISPOSAL:**

Records are retained in accordance with EPA's Assistance and Interagency Agreement Records Schedule, NC1–412–85–25/7. This schedule was developed under EPA Records Management Guidelines established pursuant to 44 U.S.C. 3101 *et seq.* Investigative and advocacy files are destroyed after the issuance of a final determination or entry of a compliance agreement. Audit files are retained throughout the term of the relevant compliance agreement. The official administrative record is retained in the office until three months after the period of debarment or voluntary exclusion expires, or all provisions of the compliance agreement have been completed. The official administrative record is then transferred to the Federal Records Center (FRC) for storage. Files relating to cases closed without action are also transferred to the FRC three months after the decision to close the matter. The records transferred to the FRC are destroyed when they are 6 years and 3 months old.

**SYSTEM MANAGER AND ADDRESSES:**

Director, Office of Grants and Debarment, U.S. Environmental Protection Agency, Mail Code 3901F, 401 M Street, SW., Washington, DC, 20460.

**NOTIFICATION PROCEDURES:**

To obtain notification on whether this system contains information on you, contact the System Manager at the above address. Proof of identity will be required prior to disclosure of the records sought. If records pertaining to you are located outside of the Office of Grants and Debarment, the System Manager will direct you to the appropriate office.

**RECORD ACCESS PROCEDURES:**

See Notification Procedures. Please specify the particular records requested.

**CONTESTING RECORD PROCEDURES:**

See Notification Procedures. Your written inquiry should identify the record(s) to be corrected, the corrective action sought, including any requested amendment to the records, and any supporting documentation you consider relevant to EPA's consideration of your request.

**RECORD SOURCE CATEGORIES:**

EPA and other Federal officials, state and local officials, private parties, businesses and other entities who may have information relevant to an inquiry, and individuals who have been suspended, proposed for debarment or debarred, and their legal representatives.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 95–24584 Filed 10–2–95; 8:45 am]

BILLING CODE 6560–50–P

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**[FRL–OW–5311–4]**

## State/Tribal Water Quality Standards: Listing of EPA Approvals

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a listing of States and Indian Tribes that have had their water quality standard regulations approved by EPA for the period covering October 1, 1991, through August 31, 1995. This notice is published in accordance with a requirement contained in the Water Quality Standards Regulation (40 CFR 131.21). Additionally, this notice contains a listing of Indian Tribes that have obtained EPA approval to administer their water quality standards program.

**FOR FURTHER INFORMATION CONTACT:**

| Region | WQS coordinator | Phone No. |
|---|---|---|
| 1 ..... | Eric Hall, JFK Federal Bldg., One Congress Street, Boston, MA 02203. | (617) 565–3533 |
| 2 ..... | Wayne Jackson, Water Division, 290 Broadway, New York, NY 10007. | (212) 264–5685 |
| 3 ..... | Evelyn MacKnight, Water Division, 841 Chestnut St., Philadelphia, PA 19107. | (215) 597–4491 |
| 4 ..... | Fritz Wagener, Water Division, 345 Courtland St., NE., Atlanta, GA 30365. | (404) 347–3555, ext. 6633 |
| 5 ..... | Dave Pfeifer, Water Division, 77 West Jackson Blvd., Chicago, IL 60604–3507. | (312) 353–9024 |

| Region | WQS coordinator | Phone No. |
|---|---|---|
| 6 ..... | Cheryl Overstreet, Water Division, 1445 Ross Ave., First Interstate Bank Tower, Dallas, TX 75202. | (214) 655–6643 |
| 7 ..... | Larry Shepard, Water Division, 726 Minnesota Ave., Kansas City, KS 66101. | (913) 551–7441 |
| 8 ..... | Bill Wuerthle, Water Division, 999 18th Street, Denver, CO 80202–2405. | (303) 744–1997 |
| 9 ..... | Phil Woods, MC W–3–2, 75 Hawthorne St., San Francisco, CA 94105. | (415) 744–1997 |
| 10 ..... | Marcia Lagerloaf or Sally Brough, Water Division (WS–139), 12 Sixth Ave., Seattle, WA 98101. | (206) 553–0176 or (206) 553–1754 |

**SUPPLEMENTARY INFORMATION:** This notice contains a compiled list of State and Tribal water quality standards review/revisions which were approved by EPA for the period beginning on October 1, 1991 and ending on August 31, 1995. The most recent list of review and revisions of State water quality standards was published on November 24, 1993 (58 FR 62124). Today's notice identifies both State and Tribal regulatory documentation that contains the State and Tribal water quality standards as well as dates of State/Tribal adoption and EPA approval. Additionally, a listing of Tribes that have obtained EPA approval to administer the water quality standards program is included in this notice. The following information is not included in this notice: (1) The text of the water quality standards, (2) any conditions (including disapprovals of portions of the State/Tribal submittals) that might have been attached to the approvals, or (3) Tribal application materials submitted to EPA for authorization to administer the water quality standards program.

The text of a State's or Tribe's standards and copies of the approval letters can be obtained from the State's or Tribe's pollution control agency or the appropriate EPA Regional Office (see above). Proprietary publications such as those of the Bureau of National Affairs also contain the text of State/Tribal water quality standards.

Dated: September 26, 1995.

Tudor T. Davies,

*Director, Office of Science and Technology.*

Tribal Water Quality Standards Program Authorizations

REGION 4

*SEMINOLE TRIBE*

*EPA Approval:* June 1, 1994

*MICCOSUKEE TRIBE*

*EPA Approval:* December 20, 1994

REGION 6

*PUEBLO OF ISLETA*

*EPA Approval:* October 13, 1992

*PUEBLO OF SANDIA*

*EPA Approval:* December 4, 1992

*PUEBLO OF SAN JUAN*

*EPA Approval:* May 12, 1993

*PUEBLO OF SANTA CLARA*

*EPA Approval:* July 19, 1995

*PICURIS PUEBLO*

*EPA Approval:* August 7, 1995

*NAMBE PUEBLO*

*EPA Approval:* August 18, 1995

REGION 8

*SALISH-KOOTENAI*

*EPA Approval:* March 1, 1995

REGION 10

*CONFEDERATED TRIBES OF THE CHEHALIS NATION*

*EPA Approval:* March 7, 1995

*PUYALLUP TRIBE OF WASHINGTON*

*EPA Approval:* May 25, 1994

Water Quality Standards Approvals

REGION 1

*DISTRICT OF COLUMBIA*

Water quality standards for the District of Columbia are contained in: ''Water Quality Standards of the District of Columbia.''

*Adopted by the District:* March 4, 1994
*Effective Date:* March 4, 1994
*EPA Action:* Partial Approval on June 27, 1994

The triennial revisions included changes to the use classification system, antidegradation policy, mercury, ammonia, and total residual chlorine criteria. EPA disapproved several provisions, including limitations on the District's wetlands criteria, human health criteria, dissolved criteria for metals, high flow exemptions, and translator procedures.

*MARYLAND*

Water quality standards for the State of Maryland are contained in: Title 26, Department of the Environment, Subtitle 08 Water Pollution, Subpart 26.08.02 Water Quality (COMAR 26.08.02).

*Adopted by the State:* December 14, 1993
*Effective Date: January 17, 1994*
*EPA Action:* Approval on May 5, 1994

Revisions included changes in use designations for several streams.

*Adopted by the State:* September 28, 1994
*Effective Date:* October 24, 1994
*EPA Action:* Approval on January 20, 1995

Revisions included use designation changes for several streams.

*Adopted by the State:* April 25, 1995
*Effective Date:* May 22, 1995
*EPA Action:* Approval on July 28, 1995

Revisions included use designation revisions for several streams.

*Adopted by the State:* December 23, 1994
*Effective Date:* January 2, 1995
*EPA Action:* Approval on April 14, 1995

The state adopted regulations that will allow for the issuance of a variance to water quality standards for pH, iron and manganese for the duration of a coal remining activity.

*Adopted by the State:* May 6, 1993
*Effective Date:* June 7, 1993
*EPA Action:* Approval on May 6, 1994

The state adopted water quality standards and NPDES program regulations to remedy a previous EPA disapproval of the State's mixing zone provisions. Revisions also include chemical and biological translator mechanisms, and criteria implementation issues.

*PENNSYLVANIA*

Water quality standards for the Commonwealth of Pennsylvania are contained in: Title 25, Rules & Regulations, Part I, Department of Environmental Resources, Subpart C, Protection of Natural Resources, Article II, Water Resources, Chapter 93, Water Quality Standards, Chapter 16, Water Quality Standards Toxics Management Strategy, Appendix C and D, Statement of Policy.

*Adopted by the Commonwealth:* July 21, 1992
*Effective Date:* October 10, 1992
*EPA Action:* Approval on December 22, 1992

Revisions included use designation changes (in Chapter 93, section 93.9) for several stream segments.

*Adopted by the Commonwealth:* December 15, 1992
*Effective Date:* May 15, 1993
*EPA Action:* Approval on September 17, 1993

Revisions included use designation changes (in Chapter 93, Section 93.9) for several stream segments.

*Adopted by the Commonwealth:* August 17, 1993
*Effective Date:* November 20, 1993
*EPA Action:* Approval on February 15, 1994

Revisions included use designation changes (in Chapter 93, Section 93.9) for several streams.

*Adopted by the Commonwealth:* May 17, 1994
*Effective Date:* July 23, 1994
*EPA Action:* Approval on January 27, 1995

Revisions included use designation changes (in Chapter 93, Section 93.9) for several streams.

*Adopted by the Commonwealth:* August 15, 1993 and November 15, 1993
*Effective Date:* February 12, 1994
*EPA Action:* Partial Approval on June 6, 1994

Revisions included the adoption of statewide chlorine criteria, a definition of existing uses, and the incorporation of the definition of wetlands into the definition of ''waters of the Commonwealth.'' EPA disapproved several provisions of the Commonwealth's water quality standards, including portions of the antidegradation policy, the aluminum criterion, and the use of ambient concentrations to adjust criteria for modification of effluent limits.

*WEST VIRGINIA*

Water quality standards for the State of West Virginia are contained in: Title 46, Legislative Rule, Water Resources Board, Series 1, Requirements Governing Water Quality Standards.

*Adopted by the State:* August 25, 1993
*EPA Action:* Conditional Approval on January 10, 1994

EPA conditionally approved and disapproved portions of the State's triennial revisions. Provisions that were conditionally approved include: Definitions, the antidegradation policy, and water use categories. Provisions that were disapproved include: several issues with the State's water quality criteria, the State's lack of adequate legal authority to issue variances, and the mixing zone policy.

REGION 4

*ALABAMA*

Water Quality Standards for the State of Alabama are contained in: Chapter 335 6–10 (Water Quality Criteria) and Chapter 335 6–11 (Water Use Classifications for Interstate and Intrastate Waters) of the Alabama Department of Environmental Management Administrative Code.

*Adopted by the State:* April 22, 1992
*Effective Date:* May 29, 1992
*EPA Action:* Approval on January 6, 1993

Revisions included use classification upgrades of Cub Creek and Cottonwood Creek from Agricultural and Industrial to Fish and Wildlife uses, and an addition of the Public Water Supply use classification for a segment of Little Kowaliga Creek. Additionally, the revisions included the deletion of a provision which specified that total halomethane criterion be computed. The human health criteria for halomethanes are now specific for each pollutant and do not apply as total halomethane criteria.

*Adopted by the State:* December 23, 1992
*Effective Date:* February 1, 1993
*EPA Action:* Approval on November 18, 1993

The revisions included the designation of an Outstanding National Resource Water for a segment of Sipsey Fork (from Sandy Creek upstream to its source at the confluence of Hubbard Creek and Thompson Creek and its tributaries, in Franklin, Lawrence, and Winston Counties).

*Adopted by the State:* November 24, 1992
*Effective Date:* December 30, 1992
*EPA Action:* Approval on May 9, 1994

Revisions included the adoption of the Outstanding Alabama Water classification into the State's water quality standards.

*Adopted by the State:* August 18, 1993
*Effective Date:* September 23, 1993
*EPA Action:* Approval on July 20, 1995

Revisions included the designation of several stream segments as Outstanding Alabama Waters (the Little Cahaba River in Bibb County and four segments of the Cahaba River).

*Adopted by the State:* July 20, 1994
*Effective Date:* August 29, 1994
*EPA Action:* Approval on August 2, 1995

Revisions included the adoption of a fish consumption rate of 30 grams/day for the derivation of human health criteria, adoption of revised human health criteria for dioxin, adoption of selected toxic pollutant criteria values consistent with those published in EPA's National Toxics Rule (58 FR 60848, December 22, 1992), and adoption of use classification upgrades for several segments as Fish and Wildlife waters (Sand Branch, a segment of Waxahatchee Creek and a tributary of Waxahatchee Creek), and the addition of the Public Water Supply use designation for several waterbody segments (segments of Terrapin Creek, Tennessee River, Flint River, and Manoy Creek).

*FLORIDA*

Water quality standards for the State of Florida are contained in: Chapters 17–302 and 17–4 of the Florida Administrative Code.

*Adopted by the State:* March 23, April 25, and June 15, 1989
*Effective Dates:* September 13, October 4, and September 13, 1989, respectively
*EPA Action:* Partial Approval on October 23, 1991

Revisions included the expansion of the antidegradation policy statement, implementation methods for antidegradation, revision of chronic toxicity narrative criteria, and inclusion of allowances for schedules of compliance based on new or revised water quality standards.

*Adopted by the State:* July 10, 1987
*Effective Date:* July 10, 1987
*EPA Action:* Approval on August 9, 1993

Revisions included changes to Section 403.086 of Chapter 403, Florida Statutes (the Grizzle-Figg Statute).

*Adopted by the State:* September 22, 1994
*Effective Date:* January 23, 1995
*EPA Action:* Approval on May 15, 1995

Revisions included changes to the antidegradation policy, revisions to water quality criteria, inclusion of mean harmonic flow for the application of certain criteria, and revisions to the designated uses of specific water bodies.

*Adopted by the State:* December 31, 1994
*Effective Date:* February 28, 1995
*EPA Action:* Approval on August 3, 1995

Revisions included the reclassification of the Fenholloway River.

*GEORGIA*

Water Quality Standards for the State of Georgia are contained in: Chapter 391–3–6–.03 (Water Use Classifications and Water Quality Standards) of the Georgia Department of Natural Resources Rules and Regulations for Water Quality Control.

*Adopted by the State:* March 24, 1993
*Effective Date:* April 28, 1993
*EPA Action:* Approval on September 30, 1994

Revisions included the adoption of narrative biocriteria, changes in criteria for toxic pollutants, an antidegradation policy to include the Outstanding National Resource Water classification, upgrades of fourteen (14) streams to the fishing designation, reclassification of the Conasauga River and Jacks Creek (in the Cohutta Wilderness Area) as Wild and Scenic Rivers, addition of site-specific criteria provision, and revisions of trout stream criteria.

*MISSISSIPPI*

Water quality standards for the State of Mississippi are contained in: State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters.

*Adopted by the State:* July 23, 1992
*EPA Action:* Approval on January 12, 1993

Revisions included a change in the pH criteria range applicable to all waters (6.5–9.0).

*Adopted by the State:* July 23, 1992
*EPA Action:* Approval on May 26, 1993

Revisions included the adoption of site-specific criteria for nickel for the Mississippi Sound.

*NORTH CAROLINA*

Water Quality Standards for the State of North Carolina are contained in: Administrative Codes Section 15A NCAC 2B .0100 (Procedures for Assignment of Water Quality Standards) and Section 15A NCAC 2B .0200 (Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina).

*Adopted by the State:* May 12 and July 14, 1994
*Effective Date:* August 1 and September 1, 1994
*EPA Action:* Approval on May 30, 1995

Revisions included 16 reclassification actions affording additional protection for certain streams, 1 reclassification involving a waterbody no longer used for drinking water, and 1 upgrade of the Black and South River to Outstanding Resource Water.

*Adopted by the State:* May 12, 1993
*EPA Action:* Approval on November 29, 1994

The State continued a variance for the water quality standard for the Pigeon River (based on color).

*Adopted by the State:* December 10, 1992
*Effective Date:* February 1, 1993
*EPA Action:* Partial Approval on November 2, 1993

The triennial revisions included water quality standards for Wetlands, narrative biological criteria, antidegradation implementation procedures (clarification of High Quality Water criteria), additional water supply watershed protection rules, reclassification of 311 water supply waterbodies, addition of two watershed supply classifications that protect moderately and highly developed watersheds, 12

reclassifications affording additional protection, 1 reclassification removing a designated shellfishing use, and 1 reclassification due to a clerical error. Statewide freshwater and tidal saltwater narrative ''action levels'' for copper and zinc were disapproved.

*SOUTH CAROLINA*

Water Quality Standards for the State of South Carolina are contained in: South Carolina Code of Regulations, Chapter 61 Water Classifications and Standards, Regulation 61–68 and Classified Waters, Regulation 61–69.

*Adopted by the State:* May 28, 1993
*EPA Action:* Approval on December 20, 1993

The triennial revisions included changes to human health criteria, inclusion of narrative biological criteria, and the designation of a section of the Little Pee Dee River as an Outstanding Resource Water.

*Adopted by the State:* May 28, 1993
*EPA Approved:* April 28, 1994

The triennial review included the adoption of a site-specific criteria mechanism.

REGION 5

*MICHIGAN*

Water quality standards for the State of Michigan are contained in: Part 4—Water Quality Standards of Part 31 Water Resources Protection of Natural Resources and Environmental Protection Act (Act 451 of 1994).

*Adopted by the State:* May 4, 1994
*Effective Date:* May 19, 1994
*EPA Action:* Approval on August 11, 1994

Revisions include recognition that some waters do not presently meet water quality standards, various definitions were added and deleted, ''Total Body Contact Recreation'' use classification was modified to reflect change to E. coli as an indicator species, E. coli was specified as an indicator organism, the burden of proof for suspension of disinfection was switched from the Department to the permit applicant, the Department was given the ability to regulate infectious organisms other than fecal coliform and E. coli, advice against total body contact recreation downstream of wastewater discharges was included, and references to all Federal documents were cited in the rules.

*OHIO*

Water Quality Standards for the State of Ohio are contained in: Ohio's Water Quality Standards Rule 3745–1–14 of the Ohio Administrative Code.

*Adopted by the State:* September 23, 1992
*Effective Date:* September 23, 1992
*EPA Action:* Approval on November 23, 1992

Revisions updated designated uses for water bodies within the Ashtabula River Basin (3745–1–14), Great Miami River Basin (3745–1–21), Chagrin River Basin (3745–1–22), and the Cuyahoga River Basin (3745–1–26) based on stream survey work.

*Adopted by the State:* May 6, 1993
*Effective Date:* May 6, 1993
*EPA Action:* Approval on November 23, 1992

Revisions included updates to the designated uses for waterbodies in the Central Ohio Tributaries (3745–1–13).

*Adopted by the State:* September 30, 1993
*EPA Action:* Approval on November 4, 1993

Revisions included updates to the designated uses for the Scioto River (3745–1–09) and Maumee River Basins (3745–1–13).

*Adopted by the State:* May 6, 1993
*EPA Action:* Approval on November 4, 1993

Revisions included updates to the designated uses for the Central Ohio Tributaries.

REGION 6

*ARKANSAS*

Water Quality Standards for the State of Arkansas are contained in: Regulation No. 2- ''Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas.''

*Adopted by the State:* August 26, 1994
*EPA Action:* Approved on December 12, 1994

The State adopted revisions to the total dissolved solids standard for a segment of the Red River (from the Arkansas-Oklahoma state line to its confluence with the Little River) and removed the domestic water supply designated use.

*Adopted by State:* December 9, 1994
*EPA Action:* Approval on April 7, 1995

The revisions included changes to sulfate and total dissolved solids criteria for Back Valley Creek and the South Fork of the Caddo River. The State adopted revisions to numeric criteria for sulfates and total dissolved solids for several waterbody segments.

*Adopted by State:* January 27, 1995
*EPA Action:* Approval on June 2, 1995

The State adopted changes to the chlorides, sulfates, and total dissolved solids criteria for Mine Creek, Poteau River, unnamed tributary to the Poteau River, Rolling Fork, and two unnamed tributaries to Rolling Fork.

*NEW MEXICO*

Water Quality Standards for the State of New Mexico are contained in: Rule Number WQCC 91–1, Amendment 1- ''Water Quality Standards for Interstate and Intrastate Streams in New Mexico.''

*Adopted by State:* January 23, 1995
*EPA Action:* Approval on August 7, 1995

Revisions included the addition of numeric criteria for total selenium, total ammonia criteria (based on pH and temperature), removal of chronic silver criteria, narrative and numeric criteria for wildlife habitat, and a provision that allows ''third party'' use attainability analyses.

*OKLAHOMA*

Water Quality Standards for the State of Oklahoma are contained in: OAC 785:45, ''Oklahoma's Water Quality Standards.''

*Adopted by State:* May 26 and June 25, 1992
*EPA Action:* Partial approval on March 2, 1993

Revisions included the addition of human health criteria for water and fish consumption (to comply with Section 303(c)(2)(B) of the Clean Water Act), modification of antidegradation implementation language, inclusion of a variance policy, and beneficial use designations for selected streams. Several portions of the document were disapproved, including: an exemption for stormwater discharges; the assumption that the State's waters do not meet the goals specified in Section 101(a)(2) of the Clean Water Act; the State's definition of ''waters of the State;'' and the lack of beneficial use assignments for streams.

*Adopted by State:* June 25, 1993
*EPA Action:* January 24, 1994

Revisions clarified the application of narrative and numeric criteria, and added beneficial use designations for selected streams.

*Adopted by State:* June 13, 1994
*EPA Action:* Approval on March 23, 1995

Revisions included changes to the definition of ''waters of the State,'' beneficial use assignments, and modification of a provision that previously assumed that the State's waters did not meet the uses specified in Section 101(a)(2) of the Clean Water Act.

*LOUISIANA*

Water quality standards for the State of Louisiana are contained in: Louisiana Administrative Code, Title 33, Part IX, Chapter 11.

*Adopted by State:* August 20, 1994
*EPA Action:* October 27, 1995

The revisions included the addition of narrative biological criteria.

*PUEBLO OF SANDIA*

Water quality standards for the Pueblo of Sandia are contained in: Pueblo of Sandia Water Quality Standards.

*Adopted by Tribe:* December 10, 1991
*EPA Action:* August 10, 1993

First set of water quality standards. Includes narrative and numeric water quality criteria for toxics, conventional, and non-priority pollutants, an antidegradation policy, and use designations.

*PUEBLO OF ISLETA*

Water quality standards for the Pueblo of Isleta are contained in: Pueblo of Isleta Water Quality Standards.

*Adopted by Tribe:* February 11, 1992
EPA Action: Approval on December 24, 1992

First set of water quality standards. Includes narrative and numeric water quality criteria for toxics and conventional pollutants, an antidegradation policy, and use designations.

*PUEBLO OF SAN JUAN*

Water quality standards for the Pueblo of San Juan are contained in: Pueblo of San Juan Water Quality Standards.

*Adopted by Tribe:* September 28, 1992
*EPA Action:* Approval on September 16, 1993

First set of water quality standards. Includes narrative and numeric water quality criteria for toxics and conventional pollutants, an antidegradation policy, and use designations.

*PUEBLO OF SANTA CLARA*

Water quality standards for the Pueblo of Santa Clara are contained in: Pueblo of Santa Clara Water Quality Code.

*Adopted by Tribe:* February 13, 1995
*EPA Action:* Approval on July 19, 1995

First set of water quality standards. Includes narrative and numeric water quality criteria for toxics and conventional pollutants, an antidegradation policy, and use designations.

*PUEBLO OF PICURIS*

Water Quality Standards for the Pueblo of Picuris are contained in: Pueblo of Picuris Water Quality Code.

*Adopted by Tribe:* May 1, 1995
*EPA Action:* Approval on August 7, 1995

First set of water quality standards. Includes narrative and numeric water quality criteria for toxics and conventional pollutants, an antidegradation policy, and use designations.

*TEXAS*

Water Quality standards for the State of Texas are contained in: Surface Water Quality Standards Chapter 307.

*Adopted by State:* September 23, 1992
*Effective Date:* November 13, 1992
*EPA Action:* Approval on June 16, 1993

Interim revision to incorporate results of two use attainability analyses.

REGION 8

*COLORADO*

Water Quality Standards for the State of Colorado are contained in: Basic Standards and Methodologies for Surface Water 3.1.0 (CCR 1002–8)

*Adopted by State:* May 4, 1993
*Effective Date:* June 30, 1994
*EPA Action:* Approval on February 23, 1994

Various revisions were adopted to clarify the water quality standards applicable to wetlands and the process for establishing site-specific water quality standards for wetlands.

*Adopted by State:* August 2, 1993
*Effective Date:* September 23, 1993
*EPA Action:* Approval on February 23, 1994

The State's antidegradation rule was revised consistent with changes to the Colorado Water Quality Control Act Amendments adopted by the 1992 Colorado Legislature.

REGION 9

*ARIZONA*

Water Quality Standards for the State of Arizona are contained in: Arizona's Rules on Water Quality Standards for Navigable Waters (Title 18, Chapter 11, Article 1).

*Adopted by the State:* February 18, 1992
*EPA Action:* Partial Approval on April 29, 1994

Revisions included the addition of numeric criteria for toxic pollutants to comply with Section 303(c)(2)(B) of the Clean Water Act, use designation changes, changes in microbiological criteria, nutrient standards, and amendments to narrative requirements. EPA previously approved portions of these revisions on March 2, May 26, and July 6, 1992. Portions of the water quality standards were disapproved on September 9, 1993, and April 29, 1994, including an exemption for mining related impoundments, the lack of mercury criteria protective of wildlife, the lack of implementation methods for narrative nutrient standards and narrative toxicity standards, and the inclusion of practical quantification limits in water quality standards.

*HAWAII*

Water quality standards for the State of Hawaii are contained in: Hawaii Administrative Rules, Title II, Chapter 54, Water Quality Standards.

*Adopted by the State:* October 16, 1992

*Effective Date:* October 28, 1992

*EPA Action:* Approval on November 4, 1992

Revisions included the adoption of numeric criteria to comply with Section 303(c)(2)(B) of the Clean Water Act.

*NEVADA*

Water Quality Standards for the State of Nevada are contained in: Nevada Administrative Code, Water Pollution Control Provisions (NAC).

*Adopted by the State:* December 21, 1993

*EPA Action:* Approval on June 9, 1994

Revisions included changes to the water quality standards for the Truckee River.

REGION 10

*WASHINGTON*

Water Quality Standards for the State of Washington are contained in: Chapter 173–201A of the Washington Administrative Code.

*Adopted by State:* September 25, 1993

*Effective Date:* November 13, 1992
*EPA Action:* Approval on June 16, 1993

Revisions included the addition of numeric criteria for several substances, the revision of freshwater and saltwater selenium criteria, a one in a million risk level for human health criteria for carcinogens, clarification on the use of whole-effluent toxicity testing and bioassessment in determining toxic effects, changes in the antidegradation policy, detailed criteria for mixing zone allowances, upgrades in use designations, clarifications that stormwater and nonpoint sources of pollution need to comply with water quality standards, and temperature conditions for the Skagit River Bypass.

[FR Doc. 95–24582 Filed 10–2–95; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. MM 95–96]**

## Mass Media Action

### Date for Filing License Renewal Applications for Radio Stations Licensed to the U.S. Virgin Islands Extended to: December 1, 1995

September 26, 1995.

In response to an ''Emergency Petition'' filed September 23, 1995, by the National Association of Broadcasters (''NAB'') on behalf of radio stations licensed to the United States Virgin Islands, the Chief, Mass Media Bureau, by this Notice and pursuant to 47 CFR 73.3539(a), extends until December 1, 1995, the date by which those stations are required to file their license renewal applications.

Licenses for radio stations in the Virgin Islands expire on February 1, 1996. License renewal applications for those stations are due to be filed on October 2, 1995. The NAB states that the Islands were severely damaged by Hurricane Marilyn on September 15, 1995, which added to the destruction caused by Hurricane Luis a week earlier. Although damage to communications facilities makes it impossible to fully account for the damage incurred by the Islands' radio stations, a number of stations lost their towers and others, particularly on St. Thomas, are operating with reduced power on lower antennas. The NAB maintains that many stations face great difficulty in assembling their renewal information; that in some cases the information has been destroyed or damaged; that lack of telephone and mail services may prevent stations from consulting with counsel; and that the efforts of personnel involved in preparing renewal applications are better devoted to continuing or restoring broadcast service, or assisting in relief efforts.

Under these circumstances, radio stations in the Virgin Islands will be permitted to file their renewal applications on December 1, 1995, rather than by the present due date of October 2, 1995. The date for filing petitions to deny and applications exclusive with renewal applications filed December 1, 1995, will be the 90th day after the Commission gives public notice of the acceptance for filing of the application. *See* 47 CFR 73.3516(e)(1); 47 CFR 73.3584(a).

For radio stations that are able and elect to file their renewal applications on October 2, 1995, the date for filing petitions to deny and applications mutually exclusive with these renewal

applications remains unchanged, *i.e.*, January 2, 1996.

All post-filing announcements and any pre-filing announcements that have not already been made in connection with the renewal application should reflect these dates. *See* 47 CFR 73.3580.

Action by the Chief, Mass Media Bureau, September 26, 1995, by Public Notice.

For additional information, contact Stuart B. Bedell, 202–418–2780.

Federal Communications Commission.

William F. Caton,

*Acting Secretary*.

[FR Doc. 95–24531 Filed 10–2–95; 8:45 am]

**BILLING CODE 6712–01–M**

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**[Report No. 2101]**

## Petition for Reconsideration of Actions in Rulemaking Proceedings

September 29, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by October 18, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253)

Amendment of the Commission's Cellular PCS Cross-Ownership Rule (GN Docket No. 90–314)

Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services (GN Docket No. 93–252)

Number of Petitions Filed: 3

Subject: Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands (GEN Docket No. 90–54 and GEN Docket No. 80–113)

Number of Petitions Filed: 2

Subject: Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54–63.58 (CC Docket No. 87–266)

Number of Petitions Filed: 4.

Federal Communications Commission.

William F. Caton,

*Acting Secretary*.

[FR Doc. 95–24590 Filed 10–2–95; 8:45 am]

**BILLING CODE 6712–01–M**

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# FEDERAL RESERVE SYSTEM

## Agency Forms Under Review

Background

Notice is hereby given of the final approval of 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, DC 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, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision of the following report:

*1. Report title*: Bank Holding Company Report of Investments and Activities

*Agency form number*: FR Y-6A

*OMB Docket number*: 7100-0124

*Effective Date*: November 2, 1995

*Frequency*: Event generated

*Reporters*: Bank Holding Companies

*Annual reporting hours*: 11,000

*Estimated average hours per response*: 1.0

*Number of respondents*: 1,746

Small businesses are not affected.

*General description of report*: This information collection is mandatory [(12 U.S.C. 1844(b) and (c))] and is not routinely given confidential treatment. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

*Abstract*: The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects information relating to acquisitions, divestitures, changes in activities, and legal authority. The response rate for the FR Y-6A varies depending on the reportable activity engaged in by each bank holding company.

The Federal Reserve approved the following revisions to the FR Y-6A:

(1) Modify the reporting threshold to collect data from those bank holding companies that control 25 percent or more of any class of non-voting equity of a bank or bank holding company. The current FR Y-6A reporting threshold applies where the bank holding company controls in excess of 25 percent of any class of non-voting equity.

(2) Eliminate the requirement to report investments in Edge and agreement corporations. This information will be proposed to be reported on the Report of Changes in Foreign Investments (FR 2064; OMB No. 7100-0109).

(3) Reformat the Investments Schedule to show one investment transaction and one activities transaction on each report page.

(4) Make certain clarifications to the reporting instructions.

Board of Governors of the Federal Reserve System, September 27, 1995.

William W. Wiles,

*Secretary of the Board*.

[FR Doc. 95–24556 Filed 10–2–95; 8:45am]

**BILLING CODE 6210–01–F**

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## Agency Forms Under Review: Correction

**AGENCY**: Board of Governors of the Federal Reserve System.

**ACTION**: Correction.

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**SUMMARY**: In notice document 95-23386 beginning on page 48991 in the issue of Thursday, September 21, 1995, make the following corrections:

1. On page 48992 in the third column, the annual reporting hours for the third report of those approved for extension without revision, OMB Docket Number 7100-0042, Applications for the Issuance and Cancellation of Federal Reserve Stock--National Bank, Nonmember Bank, Member Bank, were incorrectly stated. *Annual reporting hours*: should be changed to read ''940 (FR 2030: 43; FR 2030a: 28; FR 2056: 797; FR 2086a: 26; FR 2086b: 24; FR 2087: 22).''

Board of Governors of the Federal Reserve System, September 27, 1995

William W. Wiles,

*Secretary of the Board*.

[FR Doc. 95–24557 Filed 10–2–95; 8:45am]

**BILLING CODE 6210–01–F**

## AMCORE Financial 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 October 17, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. AMCORE Financial, Inc.*, Rockford, Illinois; to engage *de novo* through its subsidiary, AMCORE Consumer Finance Company, Inc., Loves Park, Illinois, in the issuing of private label credit cards, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 27, 1995.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 95–24567 Filed 10–2–95; 8:45 am]

BILLING CODE 6210–01–F

## FW Financial, 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 October 27, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. FW Financial, Inc.*, Huron, South Dakota; to become a bank holding company by acquiring 85.97 percent of the voting shares of First Western Bancorp, Inc., Huron, South Dakota, and thereby indirectly acquire First Western Bank, Sturgis, South Dakota; First Western Bank, Custer, South Dakota; First Western Bank, Wall, South Dakota; and First Western Bank, N.A., Atkinson, Nebraska.

In connection with this application, Applicant also has applied to acquire First Western Agency, Inc., Huron, South Dakota, and thereby engage in insurance activities, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. The geographic scope for these activities is South Dakota.

Board of Governors of the Federal Reserve System, September 27, 1995.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 95–24568 Filed 10–2–95; 8:45 am]

BILLING CODE 6210–01–F

## NationsBank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than October 27, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. NationsBank Corporation*, Charlotte, North Carolina, and NationsBank Texas Bancorporation, Inc., Charlotte, North Carolina; to acquire 100 percent of the voting shares of Sun World, National Association, El Paso, Texas, successor to Sun World Savings Bank, FSB, El Paso, Texas.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First National Bancorp*, Gainesville, Georgia; to acquire 100 percent of the voting shares of The Bank of Heard County, Franklin, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. ASB Corporation*, Osceola, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of American State Bank, Osceola, Arkansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. R. Banking Limited Partnership*, Oklahoma City, Oklahoma; to acquire additional shares of its subsidiary BancFirst Corporation, Oklahoma City, Oklahoma, and Johnston County Bancshares, Inc., Tishomingo, Oklahoma, and thereby indirectly acquire BancFirst, Oklahoma City, Oklahoma, and Bank of Johnston County, Tishmingo, Oklahoma.

*2. UMB Financial Corporation*, Kansas City, Missouri; to acquire 100 percent of the voting shares of First Sooner Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire The Oklahoma Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, September 27, 1995.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 95–24569 Filed 10–2–95; 8:45 am]

BILLING CODE 6210–01–F

## Shen Financial Fund I, L.P., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 17, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Shen Financial Fund I, L.P., and Zeev Shenkman*, both of Bala Cynwyd, Pennsylvania; each to acquire a total of 16.31 percent, of the voting shares of Execufirst Bancorp, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire First Executive Bank, Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, September 27, 1995.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 95–24570 Filed 10–2–95; 8:45 am]

BILLING CODE 6210–01–F

## GOVERNMENT PRINTING OFFICE

## The Federal Register Online via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, The Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held on Monday, November 13, 1995, at the Golden Gate University Law Library, 536 Mission St., Auditorium C, San Francisco, California 94105, from 9 a.m. to 10:30 a.m., and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online Federal Register Service offers access to the daily issues of the Federal Register by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online Federal Register is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index*, including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports*.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@eids21.eids.gpo.gov, by telephone on (202) 512–1525, or by fax on (202) 512–1262. Seating reservations will be accepted through Wednesday, November 8, 1995.

Michael F. DiMario,

*Public Printer*.

[FR Doc. 95–24518 Filed 10–2–95; 8:45 am]

BILLING CODE 1505–02–F

## The Federal Register Online via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, The Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held at the U. S. Government Printing Office, 732 North Capitol Street, Carl Hayden Room-8th Floor, Washington, DC 20401, on Friday, November 3, 1995, from 9 a.m. to 10:30 a.m., and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online Federal Register Service offers access to the daily issues of the Federal Register by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database

as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online Federal Register is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@eids21.eids.gpo.gov, by telephone on (202) 512–1525, or by fax on (202) 512–1262. Seating reservations will be accepted through Tuesday, October 31, 1995.

Michael F. DiMario,

*Public Printer.*

[FR Doc. 95–24519 Filed 10–2–95; 8:45 am]

BILLING CODE 1505–02–F

## The Federal Register Online via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, The Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access,* provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held on Wednesday, November 15, 1995, at the Los Angeles Public Library, Central Library Service, 630 West Fifth St., Los Angeles, California 90071, from 9 a.m. to 10:30 a.m., and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online Federal Register Service offers access to the daily issues of the Federal Register by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online Federal Register is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@eids21.eids.gpo.gov, by telephone on (202) 512–1525, or by fax on (202) 512–1262. Seating reservations will be accepted through Friday, November 10, 1995.

Michael F. DiMario,

*Public Printer.*

[FR Doc. 95–24520 Filed 10–2–95; 8:45 am]

BILLING CODE 1505–02–F

## The Federal Register Online via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, The Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access,* provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held on Thursday, November 16, 1995, at Arizona State University Library, Computing Commons Auditorium, Tempe, Arizona 85287, from 9 a.m. to 10:30 a.m., and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online Federal Register Service offers access to the daily issues of the Federal Register by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online Federal Register is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@eids21.eids.gpo.gov, by telephone on (202) 512–1525, or by fax on (202) 512–1262. Seating reservations will be accepted through Friday, November 10, 1995.

Michael F. DiMario,

*Public Printer.*

[FR Doc. 95–24521 Filed 10–2–95; 8:45 am]

BILLING CODE 1505–02–F

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Advisory Committee on Immunization Practices (ACIP).

*Times and Dates:* 8:30 a.m.–5:30 p.m., October 18, 1995; 8:15 a.m.–3:45 p.m., October 19, 1995.

*Place:* CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

*Matters To Be Discussed:* The Committee will discuss poliomyelitis vaccinations policy; status of diphtheria in the New Independent States; U.S. draft plan for diphtheria control; update on rotavirus vaccine; new guidelines on pneumococcal vaccine; status of measles elimination and implications for measles vaccination policy; plan to revise and combine current measles/mumps/rubella recommendations; national immunization survey; finalize 1996 recommended immunization schedule; varicella update; acellular pertussis vaccine trials; summary of results of efficacy trials in infants (Europe); vaccine of preference for

DTaP for 4th/5th doses; discussion of policy when DTaP is licensed for infants; Lyme disease vaccine; update and status of harmonization of ACIP statements and package inserts; national influenza pandemic preparedness plan; risk of complications of influenza during pregnancy; electronic updating of ACIP recommendations; programmatic strategies to increase immunization coverage: reminder/recall, immunization practice assessment and feedback; and Injury Compensation Program update. Other matters of relevance among the Committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road, NE, Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 26, 1995.

Carolyn J. Russell,

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95–24511 Filed 10–2–95; 8:45 am]

**BILLING CODE 4163–18–M**

## Food and Drug Administration

## Advisory Committee Meeting; Amendment of Notice

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Food Advisory Committee. This meeting was announced in the Federal Register of September 26, 1995 (60 FR 49616). Persons planning to attend and/or planning to make a formal presentation were asked to notify the contact person by close of business September 29, 1995. This document extends that date to close of business October 5, 1995. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:**

Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or

Catherine M. DeRoever, Advisory Committee Staff (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, or

FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Food Advisory Committee, code 10564.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 26, 1995, FDA announced a meeting of Food Advisory Committee. Beginning on page 49616, column 3, the ''*Agenda—Open public hearing*'' portion of this meeting is amended to read as follows:

*Agenda—Open public hearing.* Interested persons may present data, information , or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business October 5, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes.

Dated: September 27, 1995.

David A. Kessler,

*Commissioner of Food and Drugs.*

[FR Doc. 95–24533 Filed 9–28–95; 11:22 am]

**BILLING CODE 4160–01–F**

## Letter to Manufacturers of Blood Establishment Computer Software Products; Extension of Time Period for Premarket Submissions

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has revised the schedule for compliance with the premarket submission requirements for manufacturers of blood establishment computer software. After careful evaluation of the concerns expressed by the manufacturers, the impact of the regulatory initiative on blood establishments, and the public health significance of assuring the safety and quality of this software, FDA concluded that a 1-year extension of the time period for premarket submissions was warranted. In this notice, the agency is publishing the text of the February 10, 1995, letter sent to the manufacturers announcing a deadline of March 31, 1996, for premarket submissions.

**ADDRESSES:** To obtain a copy of the device registration package and device listing, write to the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 5600 Fishers Lane, Rockville, MD 20857. For guidance concerning premarket submissions, write to the Center for Biologics Evaluation and Research, Division of Blood Applications (HFM–370), 1401 Rockville Pike, Rockville, MD 20852–1448.

**FOR FURTHER INFORMATION CONTACT:** Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

**SUPPLEMENTARY INFORMATION:** In a March 31, 1994, letter sent to manufacturers of blood establishment computer software, FDA stated that certain software products used in the manufacture or maintenance of data for blood and blood components are devices under section 201(h) of the act (21 U.S.C. 321(h)) because these products aid in the prevention of disease by identifying unsuitable donors and by preventing the release of unsuitable blood and blood components for transfusion or for further manufacturing use. The March 31, 1994, letter stated that manufacturers would be required to make premarket submissions to CBER for each of their devices no later than March 31, 1995. The March 31, 1994, letter was published in the Federal Register of August 31, 1994 (59 FR 44991).

Numerous responses from organizations representing both software manufacturers and blood establishments expressed concerns about the requirements for premarket clearances or approval and many requested additional time to comply with such requirements. After careful evaluation of the needs expressed by the software manufacturers and the impact of this regulatory initiative on blood establishments, FDA concluded that a 1-year extension to the deadline was warranted. Therefore, by letter dated February 10, 1995, FDA notified known manufacturers of blood establishment computer software products that premarket submissions should be submitted to CBER no later than March 31, 1996. The complete text of the February 10, 1995, letter follows:

February 10, 1995

To: Blood Establishment Computer Software Manufacturers

Dear Sir/Madam:

The purpose of this letter is to notify you of the revised schedule for compliance with the various provisions of the Federal Food, Drug, and Cosmetic Act for premarket submissions for blood establishment computer software products regulated as medical devices. The schedule has been developed after careful evaluation of the concerns expressed by the software manufacturers, the impact of the regulatory initiative on blood establishments, and the public health significance of assuring the safety and quality of this software.

In a letter dated March 31, 1994, the FDA stated that the agency considers software

products intended for use in the manufacture of blood and blood components or for the maintenance of data that personnel use in making decisions regarding the suitability of donors and the release of blood or blood components for transfusion of further manufacture are devices under section 201(h) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 321(h)]. This initiative was also described in a Federal Register (FR) notice dated August 31, 1994 (59 44991) [copy enclosed].

As a medical device manufacturer, you are currently required under the Act to register your establishment and list your devices. In addition, your manufacturing operations are required to be in compliance with CGMP for devices, and you must report adverse events and other problems as required by FDA's Medical Device Reporting (MDR) regulations. FDA's device registration and listing regulations appear at Title 21, *Code of Federal Regulations* (CFR), Part 807; CGMP regulations for devices appear at 21 CFR, Part 820; and the MDR regulations appear at 21 CFR, Part 803. These and other specific points relating to establishment inspections noted in the March 31, 1994, letter and the August 31, 1994, Federal Register notice remain unchanged.

In these documents, FDA stated that manufacturers of blood establishment computer software would be required to submit to the Center for Biologics Evaluation and Research (CBER) a premarket notification or application for premarket approval for each of their devices no later than March 31, 1995. The agency received numerous responses from organizations representing both software manufacturers and blood establishments. The principal concern expressed in these responses related to the requirements for premarket clearances or approval for blood establishment computer software products. The concerns included, but were not limited to, the difficulty of expeditious compliance with the requirement for premarket clearance or approval, the need for additional, detailed guidance to be used in the preparation of premarket submissions for these specific software products, and additional time needed to remove software from use by blood establishments in situations where a software manufacturer does not intend to seek premarket clearance or approval for the particular product.

After careful evaluation of the needs expressed by the software manufacturers and the impact of this regulatory initiative on blood establishments, the FDA has concluded that a one year extension of the March 31, 1995, deadline is warranted. Therefore, premarket submissions should be submitted to CBER no later than March 31, 1996. The extension period for premarket submissions does not, however, affect other responsibilities of the computer software manufacturers and distributors who are subject to the device provisions of the Act and implementing regulations as previously stated.

To effectively implement this important and complex regulatory program, the agency intends to work with industry to clarify the expectations concerning premarket submissions through issuance of guidance. We also plan to have a continuing dialogue with affected establishments and industry organizations.

Also, within this extension period, it is the FDA's expectation that vendors and blood establishments will cooperatively conduct all transitions from software products for which premarket clearance or approval will not be sought to software products for which premarket clearance or approval is being actively pursued. These transitions should also be conducted in an orderly and effective manner so that they have minimal impact on the blood establishment's operations as they relate to the identity, safety, purity, and quality of blood products. These transitions should also be completed by March 31, 1996.

If you do not intend to make a premarket submission as outlined in the August 31, 1994, Federal Register notice, this information should be promptly sent to: Center for Biologics Evaluation and Research (CBER), Division of Blood Applications (HFM–370), 1401 Rockville Pike, Rockville, MD 20852–1448. The information should include your intent to remove software from the market and identify the steps to be taken and the support to be provided during the time needed for users to efficiently transition to other products or software manufacturers by March 31, 1996.

If you intend to make a premarket submission and have not done so by September 30, 1995, we request that you notify CBER by letter of the specific progress made by that point in time, the work remaining to be completed, and the anticipated date of filing each applicable premarket submission if not completed and submitted by September 30, 1995.

If you have questions concerning: (1) the preparation of the establishment registration and device listing notification, contact Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), at 301–443–6597, or (2) guidance for premarket submissions, contact Center for Biologics Evaluation and Research, Division of Blood Applications (HFM–370), at 301–594–2012. Please note that information regarding the content and format for premarket notification submission can be found at 21 CFR, Part 807, Subpart E.

Dated: September 26, 1995.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 95–24534 Filed 9–28–95; 11:22 am]

**BILLING CODE 4160–01–F**

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## Food And Drug Administration

**[Docket No. 92N–0391]**

## Analysis of Adverse Reactions to Monosodium Glutamate (MSG); Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Analysis of Adverse Reactions to Monosodium Glutamate (MSG),'' which the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) has prepared under a contract with FDA. As announced in the Federal Register of December 4, 1992, the agency requested that LSRO/FASEB undertake a reexamination of scientific data on possible adverse reactions to MSG.

**ADDRESSES:** ''Analysis of Adverse Reactions to Monosodium Glutamate (MSG)'' may be ordered from the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. The cost of a single paper copy is $50. Payment may be made by check or money order. For telephone orders or further information on placing an order, call LSRO/FASEB at 301–530–7030.

**FOR FURTHER INFORMATION CONTACT:** Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3103.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of December 4, 1992 (57 FR 57467), FDA announced that it had requested that LSRO/FASEB undertake a reexamination of scientific data on possible adverse reactions to MSG, under a contract (223–92–2185) with FDA. The announcement also solicited data and information and advised that there would be an open meeting, which was held on April 7 and 8, 1993, for public oral presentation of scientific data, information, and views. LSRO/FASEB completed this review and submitted to FDA a final report entitled ''Analysis of Adverse Reactions to Monosodium Glutamate (MSG)''. The agency is now announcing the availability of this final report.

Dated: September 25, 1995.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 95–24594 Filed 10-02–95; 8:45 am]

**BILLING CODE 4160–01–F**

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## National Institutes of Health

## National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

*Name of SEP:* Review on Infant Heart Surgery: CNS Sequelae of Circulatory Arrest.
*Date:* October 29, 1995.
*Time:* 8:10 p.m.
*Place:* Hyatt Regency Bethesda.
*Contact Person:* David M. Monsees, Rockledge II, Room 7178, Bethesda, Maryland 20892–7924, (301) 435–0270.
*Purpose/Agenda:* To review and evaluate grant applications.

*Name of SEP:* Review on Risk Factors in Early Human Atherogenesis.
*Date:* October 30, 1995.
*Time:* 8:30 a.m.
*Place:* Hyatt Regency Bethesda.
*Contact Person:* David M. Monsees, Rockledge II, Room 7178, Bethesda, Maryland 20892–7924, (301) 435–0270.
*Purpose/Agenda:* To review and evaluate grant applications.

These 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.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 27, 1995.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 95–24561 Filed 10–2–95; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Allergy and Infectious Diseases; 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 National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

*Name of SEP:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel—National Cooperative Inner-City Asthma Study.
*Date:* October 23–25, 1995.
*Time:* 8:30 a.m.
*Place:* Holiday Inn Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
*Contact Person:* Dr. Allen Stoolmiller, Scientific Review Administrator, 6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892–7610, (301) 496–7966.
*Purpose/Agenda:* To evaluate and review individual grant applications.

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 applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 27, 1995.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 95–24558 Filed 10–2–95; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* Communication Disorders Review Committee.
*Date:* October 18–20, 1995.
*Time:* 8 am–5:30 pm.
*Place:* National Institutes of Health, Natcher Building, Rooms C–1/C–2, 9000 Wisconsin Avenue, Bethesda, MD 20892.
*Contact Person:* Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda

To review and evaluate grant applications. 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. The applications and/or proposals and the discussion 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 could constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 27, 1995.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 95–24559 Filed 10–2–95; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 1–3, 1995, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

The meeting will be open to the public on November 1 from 7 p.m. to 7:30 p.m. for discussions of policies of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 1 from 7:30 p.m. to 10 p.m.; November 2 from 8:30 a.m. to 6 p.m. and on November 3 from 9 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigations, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request, by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A07, Bethesda, Maryland 20892.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, prior to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 27, 1995.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 95–24560 Filed 10–2–95; 8:45 am]

**BILLING CODE 4140–01–M**

## Division of Research Grants; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, November 13–14, 1995, Rockledge 2 Building, Conference Room 9A1–2, National Institutes of Health, 6701 Rockledge Drive, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on November 13 to adjournment on November 14. The meeting will include, among other topics, a discussion of some recent experiences and experiments in streamlining the peer review system. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Rockledge 2 Building, Suite 3016, National Institutes of Health, Bethesda, Maryland 20892–7778, telephone (301) 435–1124, will furnish a summary of the meting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Rockledge 2 Building, Suite 3032, National Institutes of Health, Bethesda, Maryland 20892–7762, phone (301) 435–0714, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: September 27, 1995.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 95–24562 Filed 10–2–95; 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 individual grant applications.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* October 24, 1995.
*Time:* 4 p.m.
*Place:* NIH, Rockledge II, Room 5108, Telephone Conference.
*Contact Person:* Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* November 2, 1995.
*Time:* 8 a.m.
*Place:* Embassy Suites, Washington, DC.
*Contact Person:* Dr. Elliot Postow, Scientific Review Administrator, 6701 Rockledge Drive, Room 5100, Bethesda, Maryland 20892, (301) 435–1750.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* November 2, 1995.
*Time:* 8 a.m.
*Place:* Embassy Suites, Washington, DC.
*Contact Person:* Dr. Eileen Bradley, Scientific Review Administrator, 6701 Rockledge Drive, Room 5120, Bethesda, Maryland 20892, (301) 435–1179.

*Name of SEP:* Chemistry and Related Sciences.
*Date:* November 9, 1995.
*Time:* 2 p.m.
*Place:* NIH, Rockledge II, Room 5156.
*Contact Person:* Dr. Chhanda, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

Purpose/Agenda

To review Small Business Innovation Research.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* October 25–26, 1995.
*Time:* 6:30 p.m.
*Place:* Ramada Inn, Bethesda, MD.
*Contact Person:* Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435–1165.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* November 5–6, 1995.
*Time:* 8 p.m.
*Place:* Crystal Gateway Marriott, Arlington, VA.
*Contact Person:* Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

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.

The 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 Programs 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: September 27, 1995.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 95–24566 Filed 10–2–95; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

**[Docket No. FR–3927–N–02]**

### Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: October 10, 1995.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to regulations in Subpart H of 24 CFR 235.1200, et seq. [FR–3927]. HUD seeks to enhance the program by providing for the payment by HUD, rather than by the mortgagee, of the incentive to the mortgagors and of specific refinancing costs, and by limiting the origination of these loans to the number of approved mortgagees that would make the program most attractive.

Congress added section 235 to the National Housing Act (12 U.S.C. 1715z) (the Act) in 1968. This provision authorized the Secretary to insure mortgages so that lower income families

could acquire housing. Section 235 also authorized the Secretary to assist the mortgagor by contracting with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor. Many of the mortgages insured under section 235, which are still outstanding, were made during the high interest rate years of 1980, 1981, and 1982. HUD would be able to save substantial amounts of assistance payments if the mortgages were refinanced at current lower interest rates. Congress enacted section 235(r) of the Act in 1988, so that mortgages insured and assisted under section 235 of the National Housing Act could be refinanced at a reduced interest rate.

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by this proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, as Amendment.

Dated: September 25, 1995.

Nicolas P. Retsinas,

*Assistant Secretary for Housing—Federal Housing Commissioner.*

Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Revision to the Section 235(r) Refinancing Procedures (FR–3927)

*Office:* Office of Insured Single Family

*Description of the need for the information and its proposed use:*

The information is collected by the originating lender from the mortgage application and is used by the originating lender to process the applications for Section 235(r) mortgage insurance and assistance. The applications are underwritten certified by the originating lender.

The information is needed for the evaluation of the applications, the Department's financial management and accounting system(s) and the Department's monitoring of the origination and servicing activities of the lender.

If the information is not collected the originating lender cannot make the proper underwriting decision and the Department's data base would be incomplete for its financial management and accounting system(s). Furthermore, the Department's efforts to monitor the originating and servicing activities of the lender would be debilitated.

*Form Numbers:* HUD–92900 and HUD–93114

*Respondents:* Approximately 23,000 (each potential mortgage refinance transaction is an equivalent respondent)

*Frequency of Submission:* One time only

*Reporting Burden:*

TABULATION OF ANNUAL REPORTING BURDEN

| Description | Respondents | Responses | Total annual responses | Hours per | Total hrs |
|---|---|---|---|---|---|
| Appendix 8(C) of 4330.1 | 23,000 | 1 | 23,000 | .08 | 1840 |
| Appendix 33 of 4330.1 | 23,000 | 1 | 23,000 | .08 | 1840 |
| Appendix 25 of Notice 94–66 | 13,340 | 1 | 13,340 | .02 | 267 |
| Appendix 27 of Notice 94–66 | 12,000 | 1 | 12,000 | .02 | 240 |
| Attachment 4 of Mortg Letter | 13,340 | 1 | 13,340 | .02 | 267 |
| Attachment 5 of Mortg Letter | 13,340 | 1 | 13,340 | .02 | 267 |
| Attachment 6 of Mortg Letter | 2,500 | 1 | 2,500 | .01 | 25 |
| Attachments 7-a and 7-b of Mortg letter | 20,000 | 1 | 20,000 | .05 | 1000 |
| Attachment 8 of Mortg Letter | 25 | 1 | 25 | .01 | 1 |
| Payoff Statement required by the Mortg Letter | 23,000 | 1 | 23,000 | .03 | 690 |
| Totals | | | | .34 | 6437 |

23,000 respondents is the maximum (estimated) universe. Each potential mortgage refinance transaction is an equivalent respondent; wherein, each refinance will use a different variation of the above forms in the transaction. For example, all respondents will have a payoff statement while a smaller number of respondents will have their recapture mortgage subordinated. *All numbers are rounded up to the next whole number.*

*Total estimated burden hours:* 6,437

*Status:* Reinstatement, with changes of a previously approved collection for which approval has expired.

*Contact:* Robert E. Falkenstein, Jr., (202) 708–0614, Extension 2214.

Dated: September 25, 1995.

[FR Doc. 95–24469 Filed 10–2–95; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Environmental Document Prepared for a Three-Dimensional (3D) Seismic Survey on the Pacific Outer Continental Shelf (OCS)

**AGENCY:** Minerals Management Service (MMS), U.S. Department of the Interior.

**ACTION:** Notice of the availability of an environmental document prepared for the 3–D Seismic Survey on the Pacific OCS.

**SUMMARY:** The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for a proposed 3–D seismic survey to take place offshore Santa Barbara County, California in the Santa Ynez Unit.

*Parties*

Exxon Company, U.S.A.

| Activity | Location | Date |
|---|---|---|
| 3–D Seismic Survey. | Santa Barbara Channel, Santa Ynez Unit. | 10/95 through 12/95. |

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EA's and FONSI's prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

**FOR FURTHER INFORMATION CONTACT:** Regional Supervisor, Office of Environmental Evaluation, Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Mail Stop 7300, Camarillo, California, 93010, Telephone (805) 389–7801.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and FONSI's for proposals that relate to research and development of mineral resources on the Pacific OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: September 25, 1995.

J. Lisle Reed,

*Regional Director, Pacific OCS Region.*

[FR Doc. 95–24485 Filed 10–2–95; 8:45 am]

**BILLING CODE 4310–MR–M**

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 23, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 18, 1995.

Carol D. Shull,

*Keeper of the National Register.*

ARIZONA

Coconino County

Grand Canyon Village Historic District (Boundary Increase), Grand Canyon National Park, Grand Canyon, 95001226

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Frelinghuysen University, 1800 Vermont Ave., NW., Washington, 95001228

FLORIDA

Leon County

Roberts Farm Historic and Archaeological District (Rural Resources of Leon County MPS), Roberts Rd., 1 mi. E of Centerville Rd., Tallahassee vicinity, 95001186

MASSACHUSETTS

Worcester County

Charlton Center Historic District, Roughly, Main St. from Mugget Hill Rd. to Masonic Home Rd. and adjacent roads, Charlton, 95001227

MISSISSIPPI

Amite County

Lea, Wilford Zachariah, House, MS 569 N, 2 mi. N of Liberty, Liberty vicinity, 95001181

Lincoln County

Moreton, Robert D., House, 613 S. Jackson St., Brookhaven, 95001188

MISSOURI

Gasconade County

Rotunda, The, City Park, Washington St., Hermann, 95001180

NEVADA

White Pine County

Baker Ranger Station, Great Basin National Park, Baker vicinity, 95001224

Johnson Lake Mine Historic District, Great Basin National Park, Baker vicinity, 95001225

NEW JERSEY

Burlington County

Still, Dr. James, Office, 209 Church Rd., Medford, 95001190

Middlesex County

Poile Zedek Synagogue, 145 Neilson St., New Burnswick, 95001189

Monmouth County

Christ Church (Episcopal), Shrewsbury, Jct. of Broad St. and Sycamore Ave., Shrewsbury, 95001184

Somerset County

Six Mile Run Historic District, Roughly bounded by Grouse Rd., Amwell Rd., Bennetts Ln., NJ 27, Bunker Hill Rd. and the Millstone R., Franklin Park vicinity, 95001191

Union County

Homestead Farm at Oak Ridge, Jct. of Oak Ridge Rd. and Feather Bed Ln., Clark and Edison Townships, Clark, 95001185

NORTH CAROLINA

Buncombe County

Bent Creek Campus of the Appalachian Forest Experiment Station (Boundary Decrease), Brevard Rd. S of jct. with I–26, Asheville vicinity, 95001187

Duplin County

Wallace Commercial Historic District (Duplin County MPS), Roughly bounded by Southerland, College, Boney and Raleigh Sts., Wallace, 95001179

OHIO

Ashtabula County

Eagle Cliff Hotel, 5254 Lake Rd., E, Geneva-on-the-Lake, 95001197

Ottawa County

Andres, Charles, House, Co. Rd. No. 154 (Fox Rd.), Middle Bass Island, 95001196

VIRGINIA

Henrico County

Richmond National Cemetery (Civil War Era National Cemeteries MPS), 1701 Williamsburg Rd., Richmond (Independent City) vicinity, 95001183

Seven Pines National Cemetery (Civil War Era National Cementeries MPS), 400 E. Williamsburg Rd., Sandston, 95001182

In order to assist in the preservation of the following property, the commenting period is being shortened to five days:

NEW YORK

Putnam County

St. Philip's Church in the Highlands Complex (Hudson Highlands MRA), NY 9D, Garrison, 82005391

[FR Doc. 95–24565 Filed 10–2–95; 8:45 am]

**BILLING CODE 4310–70–M**

### Notice of Realty Action

**SUMMARY:** Revision of Park Boundary, Women's Rights National Historical Park.

**LOCATION:** Women's Rights National Historical Park, Seneca County, New York.

Whereas, Public Law 95–42 (91 Stat. 211) dated June 10, 1977, amended the Land and Water Conservation Fund Act of 1965 to authorize the Secretary of the Interior to make minor boundary changes when necessary for the proper interpretation or management of an area of the National Park System; and

Whereas, Public Law 95–42, provides that the Secretary may make minor revisions to the boundaries of areas within the National Park System,

Whereas, it is necessary to include within the boundary of the park two parcels of land to provide for management and interpretation consistent with the authorizing legislation,

Therefore, pursuant to Section (5) of Public Law 95–42, notice is given that the boundary of Women's Rights National Historical Park has been revised to include the 0.85 of an acre tracts identified and described as Tracts 101–09 and 101–10 on Land Status Map 101 on Drawing No. 488/80,003, Sheet 2 of 3, dated November 1986, and revised July 1991, prepared by the Land Resources Division, Northeast Field Area, National Park Service.

The map is on file and available for inspection in the office of the National Park Service, Northeast Field Area, Land Resources Division, U. S. Custom House, 200 Chestnut Street, Philadelphia, Pennsylvania 19106.

Warren D. Beach,

*Field Director, Northeast Field Area.*

[FR Doc. 95–24589 Filed 10–2–95; 8:45 am]

**BILLING CODE 4310–70–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–724 (Final)]**

## Manganese Metal From the People's Republic of China

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**EFFECTIVE DATE:** September 26, 1995.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

**SUPPLEMENTARY INFORMATION:** On June 13, 1995, the Commission instituted the subject investigation and established a schedule for its conduct (60 F.R. 35223, July 6, 1995). Subsequently, the petitioners requested that the Commission modify its schedule for the investigation because of conflicts with the investigation being conducted by the Department of Commerce. The Commission has determined to revise its scheduled hearing date in the investigation.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 23, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 24, 1995; the deadline for filing prehearing briefs is October 26, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on November 1, 1995; and the deadline for filing posthearing briefs is November 8, 1995.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: September 26, 1995.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 95–24574 Filed 10–2–95; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Health Choice of Northwest Missouri, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the Western District of Missouri in *United States* v. *Health Choice of Northwest Missouri, Inc., et al.*, Civil No. 95–6171–CV–SJ–6 as to Health Choice of Northwest Missouri, Inc., Heartland Health Systems, Inc. and St. Joseph Physicians, Inc.

The Complaint alleges that the defendants entered into an agreement with the purpose and effect of restraining competition unreasonably, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by preventing managed care plans from developing in Buchanan County, Missouri.

The proposed Final Judgment eliminates the continuance or recurrence of Defendants' agreement to prevent or delay the development of managed care in Buchanan County.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief; Professionals and Intellectual Property Section/Health Care Task Force; United States Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C., 20530 (telephone: 202/307–5799.

Rebecca P. Dick,

*Deputy Director of Operations.*

United States District Court for the Western District of Missouri

In the matter of: United States or America, Plaintiff, vs. Health Choice of Northwest Missouri, Inc., Heartland Health System, Inc., and St. Joseph Physicians, Inc. Defendants Civil Action No. 95–6171–CV–SJ–6.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of Missouri;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

For Plaintiff, United States of America:

Anne K. Bingaman,

*Assistant Attorney General.*

Rebecca P. Dick,

*Deputy Director, Office of Operations.*

Gail Kursh,

*Chief, Professions & Intellectual Property Section, Antitrust Division, U.S. Department of Justice.*

For Defendant Health Choice of Northwest Missouri, Inc.:

*510 Francis Avenue, St. Joseph, MO 64501.*

For Defendant Heartland Health System, Inc.

Thomas D. Watkins,

*Watkins, Boulware, Lucas Miner, Murphy & Taylor, 3101 Frederick Avenue, St. Joseph, MO 64506.*

For Defendant St. Joseph Physicians, Inc.

Richard D. Raskin,

*Sidley & Austin, One First National Plaza, Chicago, IL 60603, (312) 853–2170.*

Lawrence R. Fullerton,

*Chief of Staff.*

Edward D. Eliasberg, Jr.,

Dando B. Cellini,

Mark J. Botti,

John B. Arnett, Sr.,

Gregory S. Asciolla,

*Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, NW., Room 9429, BICN Bldg., Washington, DC 20530, (202) 307–0808.*

United States District Court for the Western District of Missouri

In the matter of: United States of America, Plaintiff, vs. Health Choice of Northwest Missouri, Inc., Heartland Health System, Inc., and St. Joseph Physicians, Inc., Defendants.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on September 13, 1995, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And Whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ordered, adjudged, and decreed:

I

*Jurisdiction*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

*Definitions*

As used in this Final Judgment:

(A) ''Ancillary services'' means home health care, hospice care, outpatient rehabilitation services, and durable medical equipment.

(B) ''Competing physicians'' means physicians in the same relevant physician market in separate medical practices.

(C) ''General adult primary care'' (''GAPC'') means family practice and general internal medicine, whether or not physicians practicing in these areas are Board certified or Board eligible.

(D) ''Health Choice'' means Health Choice of Northwest Missouri, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors.

(E) ''Heartland'' means Heartland Health System, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors, but does not include Heartland Health Foundation.

(F) ''Messenger model'' means the use of an agent or third party to convey to purchasers any information obtained from individual providers about the fees which each provider is willing to accept from such purchasers, and to convey to providers any contract offer made by a purchaser, where (1) each provider makes a separate, independent, and unilateral decision to accept or reject a purchaser's offer, (2) the fee information conveyed to purchasers is obtained separately from each individual provider, and (3) the agent or third party (a) does not negotiate collectively for the providers, (b) does not disseminate to any provider the agent's or third party's or any other provider's views or intentions as to the proposal and (c) does not otherwise serve to facilitate any agreement among providers on price or other significant terms of competition.

(G) ''Non-Heartland physician'' means a physician who is not employed by Heartland and whose practice is not owned by Heartland.

(H) ''Provider panel'' means those health care providers whom an organization authorizes to provide care to its enrollees and whom enrollees are given financial incentives to use.

(I) ''Qualified managed care plan'' means an organization that is owned, in whole or in part, by any or all of the defendants and that offers a provider panel. A qualified managed care plan must satisfy each of the following criteria:

(1) Its owners or not-for-profit members (''members'') who compete either with other owners or members or with providers participating on the organizations' provider panel (a) share substantial financial risk and (b) either directly or through ownership or membership in another organization comprise no more than 30% of the physicians in any relevant physician market, except that it may include Heartland, any single physician, or any single physician practice group for each relevant physician market,

(2) it has a provider panel that includes no more than 30% of the physicians in any relevant physician market, unless, for those subcontracting physicians whose participation increases the panel beyond 30%, (a) there is a sufficient divergence of economic interest between those physicians and the owners or members of the organization so that the owners or members have the incentive to bargain down the fees of the subcontracting physicians, (b) the organization does not directly pass through to the payer substantial liability for making payments to the subcontracting physicians, and (c) the organization does not compensate those subcontracting physicians in a manner that substantially replicates ownership in the organization, and

(3) it does not facilitate agreements between any subcontracting physicians and the owners or members concerning charges to payors not contracting with the organization.

Nothing herein shall be deemed to limit the ability of a qualified managed care plan to create financial incentives for improved performance goals for a provider or the organization or to shift risk to a provider, consistent with this Paragraph.

(J) ''Relevant physician market'' means GAPC physicians, pediatricians, obstetricians or gynecologists in Buchanan County, Missouri, unless defendants obtain plaintiff's prior written approval of a different definition for any or all of these markets, or any other relevant market for physician services. This definition is for the sole and limited purposes of this Final Judgment, and shall not constitute an admission or agreement that the

relevant physician market for any other purpose is limited to Buchanan County, Missouri.

(K) ''SJPI'' means St. Joseph Physicians, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors.

(L) ''Subcontracting physician'' means any physician who provides health care services to a qualified managed care plan, but does not hold, directly or indirectly, any ownership interest in that plan.

(M) ''Substantial financial risk'' means financial risk such as that achieved when an organization receives revenue through capitation or payment of insurance premiums, or when the organization creates significant financial incentives for providers to achieve specified cost-containment goals, such as withholding a substantial amount of their compensation, with distribution of that amount made only if the cost-containment goals are met.

III

*Applicability*

This Final Judgment applies to Health Choice, Heartland, and SJPI, and to all other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in concert with any or all of the defendants.

IV

*SJPI Injunctive Relief*

SJPI is enjoined from:

(A) Requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which SJPI has an ownership interest, precluding any physician from contracting with any payor or urging any physician not to contract with another payor; provided that, nothing in this Final Judgment shall prohibit SJPI from paying dividends to its owners;

(B) Disclosing to any physician any financial or price or similar competitively sensitive business information about any competing physician, except as is reasonably necessary for the operation of any qualified managed care plan in which SJPI has an ownership interest, or requiring any physician to disclose to SJPI any financial, price or similar competitively sensitive business information about any competitor of SJPI or managed care plan in which SJPI has an ownership interest; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(C) Setting the fees or other terms of reimbursement or negotiating for competing physicians unless SJPI is a qualified managed care plan; provided that, nothing in this Final Judgment shall prohibit SJPI from using a messenger model, even if SJPI is not a qualified managed care plan; and

(D) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of this Section IV of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit SJPI from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan.

*Health Choice Injunctive Relief*

Except as permitted in Section VIII, Health Choice is enjoined from:

(A) Requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which Health Choice has an ownership interest, precluding any physician from contracting with any payor, or urging any physician not to contract with another payor;

(B) Disclosing to any physician any financial, price or similar competitively sensitive business information about any competing physician, except as is reasonably necessary for the operation of Health Choice or any managed care plan in which Health Choice has an ownership interest, or requiring any physician to disclose to Health Choice any financial, price or similar competitively sensitive business information about any competitor of Health Choice or any managed care plan in which Health Choice has an ownership interest; provided that, nothing in this Final Judgment shall probibit the disclosure of information already generally available to the medical community or the public;

(C) Setting the fees or other terms of reimbursement or negotiating for competing physicians unless Health Choice is a qualified managed care plan; provided that, nothing in this Final Judgment shall prohibit Health Choice from using a messenger model, even if Health Choice is not a qualified managed care plan; and

(D) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of this Section V of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit Health Choice from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan.

VI

*Heartland Injunctive Relief*

Except as permitted in Section VIII, Heartland is enjoined from:

(A) (1) Disclosing to any person directly responsible for pricing physician or ancillary services of Heartland any price or, without appropriate consent, other proprietary business information about any other physician or ancillary services provider, except as is reasonably necessary for the operation of any qualified managed care plan in which Heartland has an ownership interest, and

(2) Disclosing to any competing physician or ancillary services provider any price or, without appropriate consent, other proprietary business information about any other physician or ancillary services provider; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(B) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of Section V of the Final Judgment as if those Paragraphs applied to that organizaton; provided that, nothing in this Final Judgment shall prohibit Heartland from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan;

(C) Agreeing with a competitor to allocate or divide the market for, or set the price for, any competing service, except as is reasonably necessary for the operation of any qualified managed care plan or legitimate joint venture in which Heartland has an ownership interest;

(D) Acquiring during the next five years:

(1) The practice of any non-Heartland physician who at the filing of this Final Judgment has active staff privileges in family practice or general internal medicine (diagnosticians excluding subspecialties of internal medicine) or the practice of any physician who after

the filing of this Final Judgment establishes a practice and provides services as a GAPC physician in Buchanan County, Missouri, without the prior written approval of the plaintiff; and

(2) Any physician practice located in Buchanan County, Missouri that has provided services in Buchanan County, Missouri within five years prior to the date of the proposed acquisition, unless Heartland provides plaintiff with 90 days' prior written notice of the proposed acquisition; and

(E) Conditioning the provision of any inpatient hospital service to patients of any competing managed care plan by making that service available only if the competing managed care plan;

(1) Purchases or utilizes (a) Heartland's utilization review program, (b) any Heartland managed care plan, or (c) Heartland's ancillary or outpatient services or any physician's services, unless such services are intrinsically related to the provision of acute inpatient care, such as but not limited to where Heartland's provision of inpatient care inherently gives rise to Heartland bearing professional responsibility for such services, so long as Heartland otherwise makes its inpatient services available to competing managed care plans as set forth in this Paragraph; or

(2) Contracts with or deals with Health Choice, Community Health Plan, or any other Heartland managed care plan.

This Paragraph (E) shall not apply to any contract with an organization in which Heartland has a substantial financial risk.

This Paragraph (E) shall not limit Heartland's ability to condition the provision of any inpatient hospital service on the purchase or utilization of ancillary or outpatient services or physician's services selected by Heartland, pursuant to any contract in which Heartland bears financial risk, so long as Heartland otherwise makes its inpatient services available to competing managed care plans as set forth in this Paragraph.

VII

*Additional Provisions*

(A) Health Choice shall:

(1) Inform each physician on its provider panel annually in writing that the physician is free to contract separately with any other managed care plan on any terms; and

(2) Notify in writing each payor with which Health Choice has or is negotiating a contract that each provider on Health Choice's provider panel is free to contract separately with such payor on any terms, without consultation with Health Choice; and

(B) Heartland shall:

(1) Observe the attached and incorporated Heartland Referral Policy relating to the provision of ancillary services;

(2) File with plaintiff each year on the anniversary of the filing of the Complaint in this action a written report disclosing the rates, terms, and conditions for inpatient hospital services Heartland provides to any managed care plan or hospice program, including those affiliated with Heartland. Plaintiff agrees not to disclose this information unless in connection with a proceeding to enforce this Final Judgment or pursuant to court or Congressional order; and

(3) Give plaintiff reasonable access to its credentialing files for the purpose of determining if Heartland used its credentialing authority to deny hospital privileges to physicians employed by or otherwise affiliated with a competing managed care plan, provided Heartland is given all necessary authorizations for the release of such records.

VIII

*Heartland Permitted Activities*

Notwithstanding any of the prohibitions or requirements of Sections IV through VII of this Final Judgment, Heartland may:

(A) Own 100% of an organization that includes competing physicians on its provider panel and either uses a messenger model or sets fees or other terms of reimbursement or negotiates for physicians so long as the organization complies with Paragraphs (A) and (B) of Section V of the Final Judgment as if those Paragraphs applied to that organization, and with the subcontracting requirements of a qualified managed care plan;

(B) Employ or acquire the practice of any physician not located in Buchanan County, Missouri, who derived less than 20% of his or her practice revenues from patients residing within Buchanan County, Missouri, in the year before the employment or acquisition;

(C) If Plaintiff does not disapprove under the procedures set out in this Paragraph (C), employ or acquire the practice of any GAPC physician so long as Heartland incurs substantial costs recruiting such physician for the purpose of beginning the offering of GAPC services in Buchanan County, Missouri, or gives either substantial financial support or an income guarantee to such physician to induce that physician to begin offering GAPC services in Buchanan County, Missouri, and employs the physician or acquires the practice within two years of the physician first offering GAPC services in Buchanan County, Missouri. Heartland must give the plaintiff an opportunity to disapprove, by giving plaintiff 30 days prior written notice and such information in Heartland's possession as is necessary to determine whether the above criteria have been met. Plaintiff shall not disapprove if these criteria are met. If plaintiff disapproves, plaintiff will set forth the reasons for disapproval. If plaintiff fails to disapprove within 30 days of receipt of the requisite information, the criteria shall be deemed to have been met, and Heartland may employ or acquire the practice of the GAPC physician; and

(D) With plaintiff's prior written approval, employ or acquire the practice of any physician who will cease to be a GAPC physician in Buchanan County, Missouri, unless Heartland acquires the practice or employs the physician.

IX

*Judgment Modification*

In the event that any of the provisions of this Final Judgment proves impracticable as to any defendant or in the event of a significant change in fact or law, that defendant may move for, and plaintiff will reasonably consider, an appropriate modification of this Final Judgment. Nothing in this Section limits the right of any defendant to seek any modification of this Final Judgment it deems appropriate.

X

*Compliance Program*

Each defendant shall maintain a judgment compliance program, which shall include:

(A) Distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all senior administrative officers and directors;

(B) Distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph (A) of this Section X;

(C) Briefing annually those persons designated in Paragraphs (A) and (B) of this Section X on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

(D) Obtaining from those persons designated in Paragraphs (A) and (B) of this Section X annual written certifications that they (1) have read, understand, and agree to abide by this

Final Judgment, (2) understand that their noncompliance with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported any violation of this Final Judgment of which they are aware to counsel for the respective defendant; and

(E) Maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

XI

*Certifications*

(A) Within 75 days after entry of this Final Judgment, each defendant shall certify to plaintiff that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Paragraph (A) of Section X above;

(B) For five years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to plaintiff whether it has complied with the provisions of Section X above applicable to it; and

(C) Each defendant shall provide written notice to plaintiff if at any time during the period that this Final Judgment is in effect (1) that defendant owns an interest in a qualified managed care plan, (2) that qualified managed care plan includes among its owners or members any single physician practice group which comprises more than 30% of the physicians in any relevant physician market, and (3) that single physician practice group adds additional physicians.

XII

*Plaintiff's Access*

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, shall on reasonable notice be permitted during the term of this Final Judgment:

(A) Access during regular business hours of any defendant to inspect and copy all records and documents in the possession or under the control of that defendant relating to any matters contained in this Final Judgment;

(B) To interview officers, directors, employees, and agents of any defendant, who may have counsel present, concerning such matters; and

(C) To obtain written reports from any defendant, under oath if requested, relating to any matters contained in this Final Judgment.

XIII

*Notifications*

To the extent that it may affect compliance obligations arising out of this Final Judgment, each defendant shall notify the plaintiff at least 30 days prior to any proposed (1) dissolution, (2) sale or assignment of claims or assets of that defendant resulting in the emergence of a successor corporation, or (3) change in corporate structure of that defendant.

XIV

*Jurisdiction Retained*

This Court retains jurisdiction to enable any of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV

*Expiration of Final Judgment*

This Final Judgment shall expire five (5) years from the date of entry; provided that, before the expiration of this Final Judgment, plaintiff, after consultation with defendants and in plaintiff's sole discretion, may extend the judgment, except for Section VI(D), for an additional five years.

XVI

*Public Interest Determination*

Entry of this Final Judgment is in the public interest.

Dated:. _____

_____

United States District Judge.

## Referral Policy

*I. General Statement*

After a patient or the patient's family or other appropriate person (collectively ''patient'') has been identified (via screening, assessment, discharge planning, staff, family, physician, or other means) as being in need of appropriate home health care, hospice, DME, or outpatient rehabilitation services (referred to collectively as ''Ancillary Service''), and, if necessary, a physician's order has been obtained, the following procedures will be used by a referring person when connecting patients to the appropriate Ancillary Service. Our focus is on patient choice.

*II. Ancillary Service Referrals*

A. If a physician orders an Ancillary Service and specifies the provider to be used (whether specifically written in the chart or other written notification), then a referring person shall contact the patient indicating that the physician has ordered an Ancillary Service and has ordered that a particular provider be used. The patient should be asked whether this is acceptable, and if so, referred to that provider. (If the patient does not wish that provider, see subsection B below.)

B. If a physician orders an Ancillary Service, but does not specify the provider to use, then the patient shall contacted and informed that his physician has ordered an Ancillary Service, and shall be asked if he has a preference as to which provider to use:

1. If the patient has a preference, that preference shall honored.

2. If the patient has no preference, a referring person shall indicate that Heartland has an excellent, fully accredited Ancillary Service that is available to the patient, and the appropriate Heartland brochure may be given. If the patient accepts, then the referral shall be made to Heartland's Ancillary Service.

3. If the patient has not accepted Heartland's Ancillary Service (see subsection B(2) above), or asks what other providers are available, a referring person shall state that there are other providers in the community that offer the Ancillary Service; however, the referring person cannot make a recommendation as to these other providers, but there is a listing of them in the telephone book. [PATIENT SHALL BE GIVEN A REASONABLE AMOUNT OF TIME TO INVESTIGATE OTHER OPTIONS] If the patient at this point chooses a provider, that choice is to be honored. However, if the patient again requests that a referring person provide them with the names of other providers, the social worker should indicate that Heartland has done no independent review or evaluation of these providers and cannot speak to the quality of care they provide, and then verbally name these providers. The patient's choice shall be honored.

## In the United States District Court for the Western District of Missouri

In the matter of: United States of America, Plaintiff, vs. Health Choice of Northwest Missouri, Inc., Heartland Health System, Inc., and St. Joseph Physicians, Inc., Defendants. [Case No. 95–6171–CV–SJ–6.]

## Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA''), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

*Nature and Purpose of the Proceeding*

On September 13, 1995, the United States filed a civil antitrust Complaint

alleging that defendant Health Choice of Northwest Missouri, Inc. (''Health Choice''), defendant Heartland Health System, Inc. (''Heartland''), and defendant St. Joseph Physicians, Inc. (''SJPI''), with others not named as defendants, entered into an agreement, the purpose and effect of which was to restrain competition unreasonably by preventing or delaying the development of managed care in Buchanan County, Missouri (''Buchanan County''), in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks injunctive relief to enjoin continuance or recurrence of the violation.

The United States filed with the Complaint a proposed Final Judgment intended to settle this matter. Entry of the proposed Final Judgment by the Court will terminate this action, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

Plaintiff and all defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA''), unless prior to entry plaintiff has withdrawn its consent. The proposed Final Judgment provides that its entry does not constitute any evidence against, or admission by, any party concerning any issue of fact or law.

The present proceeding is designed to ensure full compliance with the public notice and other requirements of the APPA. In the Stipulation to the proposed Final Judgment, defendants have also agreed to be bound by the provisions of the proposed Final Judgment pending its entry by the Court.

II

*Practices Giving Rise to the Alleged Violations*

SJPI is a Missouri for-profit corporation, with its principal place of business in St. Joseph, Missouri (''St. Joseph'').[1] SJPI was incorporated in April 1986 by roughly 85 percent of the approximately 130 physicians practicing or living in Buchanan County. The physicians who own SJPI have never integrated their separate, individual medical practices or shared substantial financial risk for SJPI's failure to achieve predetermined cost containment goals.

SJPI was formed primarily to negotiate collectively about fees and other contract terms with managed care plans seeking to enter Buchanan County. Managed care is a type of health care financing and delivery that seeks to contain costs through using administrative procedures and granting financial incentives to providers and patients. Typically, under such an approach, individual health care providers either are paid one set, predetermined fee for meeting all or nearly all of an enrollee's health care needs, regardless of the frequency or severity of the needed services, or are subject to a substantially discounted fee schedule and rigorous utilization review (i.e., assessment of the necessity and appropriateness of treatment). Beginning almost immediately after its incorporation, SJPI entered into fee negotiations collectively on behalf of its physicians with various managed care plans attempting to enter Buchanan County.

Heartland operates the only acute care hospital in the three-county area of Buchanan and Andrew Counties, Missouri, and Doniphan County, Kansas.[2] On several occasions before January 1990, Heartland supported SJPI's efforts to deal collectively with managed care plans seeking to enter Buchanan County, and, in at least one instance, represented SJPI in such dealings. Between April 1986 and December 1989, no managed care plan was able to obtain a contract with SJPI or with any individual SJPI physician.

In January 1990, SJPI and Heartland formed Health Choice, a for-profit Missouri corporation, to provide managed care services to individuals in Buchanan County. Heartland and SJPI each own 50% of the common stock of Health Choice.

The Health Choice physician provider panel consists of approximately 85% of the physicians working or residing in Buchanan County, including nearly all of the SJPI physicians. Heartland is the primary provider of hospital services for Health Choice.

SJPI and Heartland established, through Health Choice, a utilization review program and a fee schedule for competing physicians in Buchanan County and agreed on several occasions that SJPI physicians and Heartland would deal with managed care plans only through Health Choice. In general, SJPI and Heartland advised managed care plans that they had to use Health Choice's provider panel, fee schedule, and utilization review program. At no time, however, did Heartland, SJPI or the physicians participating on the Health Choice provider panel share substantial risk in connection with the achievement by Health Choice of predetermined cost containment goals. Since the formation of Health Choice, no managed care plan has been able to enter Buchanan County without contracting with Health Choice, despite the efforts of several plans to do so. Because of the high percentage of local doctors participating in Health Choice, no managed care plan could assemble an adequate panel of providers without including some physicians who participated in Health Choice.[3] By refusing to deal with managed care plans except through Health Choice, Heartland and SJPI physicians were able to obtain higher compensation and a more favorable hospital utilization review program from managed care plans than they would have been able to obtain independently.

Based on the facts described above, the Complaint alleges that the defendants entered into a contract, combination, or conspiracy to reduce or eliminate the development of managed care in Buchanan County in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint further alleges that this conduct had the effect of (1) unreasonably restraining price and other competition among managed care plans, (2) unreasonably restraining price competition among physicians, and (3) depriving consumers and third-party payors of the benefits of free and open competition in the purchase of health care services in Buchanan County.

III

*Explanation of the Proposed Final Judgment*

The proposed Final Judgment is intended to prevent the continuance or recurrence of defendants' agreement to discourage the development of managed care in Buchanan County. The overarching goal of the proposed Final Judgment is to enjoin defendants from engaging in any activity that unreasonably restraints competition among physicians and among managed care plans in Buchanan County, while

[1] St. Joseph is the county seat of Buchanan County, which has a population of about 72,000 and is located about 55 miles northwest of Kansas City, Missouri.

[2] Heartland also provides home health care, hospice, rehabilitation, and other ''ancillary'' health care services in Buchanan County. There was some evidence that Heartland may have used its market power in inpatient hospital services to gain a competitive advantage in various ancillary health care services.

[3] Shortly before Health Choice became operational, HealthNet, a competing managed care plan, entered Buchanan County. HealthNet contracted with several self-insured plans in Buchanan County but with no managed care plans.

still permitting defendants to market a provider-controlled plan.[4]

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to defendants and to all other persons (including SJPI stockholders) who receive actual notice of this proposed Final Judgment by personal service or otherwise and then act or participate in concert with any defendant. The proposed Final Judgment applies to SJPI, Health Choice, Heartland, and Heartland's healthcare-related entities. The proposed Final Judgment does not apply to Heartland's entities that do not provide health care services.

B. Prohibitions and Obligations

Sections IV through VIII of the proposed Final Judgment contain the substantive provisions of the consent decree. Section IV applies to SJPI, Section V to Health Choice, and Section VI to Heartland. Section VII contains additional provisions that apply to Health Choice and to Heartland. Section VIII applies only to Heartland.

In Sections IV(A) and V(A), SJPI and Health Choice are enjoined from requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which SJPI or Health Choice has an ownership interest. SJPI and Health Choice are also barred from precluding any physician from contracting, or urging any physician not to contract, with any purchaser of physician services.

Sections IV(B), V(B), and VI(A) prohibit the sharing of competitively sensitive information. SJPI, Health Choice, and Heartland are enjoined from disclosing to any physician any financial, price, or similarly competitively sensitive business information about any competing physician or any competitor of defendants. An exception permits any defendant to disclose such information if disclosure is reasonably necessary for the operation of a qualified managed care plan (''QMCP''—as defined in the proposed Final Judgment and discussed below) in which that defendant has an ownership interest, or if the information is already generally available to the medical community or the public.

Sections IV(C) and V(C) prohibit fee setting and provide that SJPI and Health Choice, respectively, are enjoined from collectively negotiating or setting fees or other terms of reimbursement, or negotiating on behalf of competing physicians, unless the negotiating entity is a QMCP. However, SJPI and Health Choice are permitted to use a messenger model (as defined in the proposed Final Judgment and discussed below).

Sections IV(D), V(D), and VI(B) enjoin SJPI, Health Choice, and Heartland, respectively, from owning an interest in any organization that sets fees or other terms of reimbursement, or negotiates for competing physicians, unless that organization is a QMCP and it complies with Sections IV(A) and (B) (for SJPI) and Sections V(A) and (B) (for Health Choice and Heartland). However, defendants may own an interest in an organization that uses a messenger model, as discussed below.

Section VI(C) enjoins Heartland from agreeing with a competitor to allocate or divide any markets or set the price for any competing service, except as is reasonably necessary for the operation of any QMCP or legitimate joint venture in which Heartland has an ownership interest.[5]

Section VI(D) enjoins Heartland from acquiring any family or general internal medicine practice without plaintiff's prior approval, or from acquiring any other physician practice located in Buchanan County without 90 days prior notification.

Section VI(E) enjoins Heartland from conditioning the provision of its inpatient hospital services on the purchase or use of Heartland's utilization review program, managed care plan, or ancillary, outpatient, or physician services, unless such services are intrinsically related to the provision of acute inpatient care. (These prohibitions, however, do not apply to any organization or any contract in which Heartland has a substantial financial risk.)

Section VII of the proposed Final Judgment contains additional provisions with respect to Health Choice and Heartland. Section VII(A) requires Health Choice to notify participating physicians annually that they are free to contract separately with any other managed care plan on any terms, and to notify in writing each payor with whom Health Choice has or is negotiating a contract that each of its participating physicians is free to contract separately with such payor on any terms and without consultation with Health Choice.

Under Section VII(B)(1), Heartland is required to observe its formal written policy relating to the provision of ancillary services. This policy was developed by Heartland and is attached to the proposed Final Judgment. Heartland must under Section VII(B)(2) file with plaintiff annually on the anniversary of the filing of the Complaint a written report disclosing the rates, terms, and conditions for inpatient hospital services that Heartland provides to any managed care plan or hospice program, including those affiliated with Heartland.

Heartland is required under Section VII(B)(3) to give plaintiff reasonable access to its credentialing files for the purpose of determining if Heartland misused its credentialing authority, such as by denying hospital privileges to physicians affiliated with managed care plans that compete with Health Choice.

Section VIII permits Heartland to engage in certain activities. Under Section VIII(A), Heartland may own 100% of an organization that includes competing physicians on its provider panel and sets fees or other terms of reimbursement or negotiates for physicians, provided the organization complies with Sections V(A) and (B) and with the subcontracting requirements of a QMCP.

Section VIII(B) permits Heartland to employ or acquire the practice of any physician not located in Buchanan County, who derived less than 20% of his or her practice revenues from patients residing in Buchanan County in the year before employment or acquisition.

Section VIII(C) permits Heartland to employ or acquire the practice of any general practice, family practice, or internal medicine physician, provided Heartland actively recruited the physician to begin offering those services in Buchanan County, gave either substantial financial support or an income guarantee to such physician, and is employing the physician or acquiring the practice within two years of the first offering of those services by that physician in Buchanan County. Heartland must give plaintiff 30 days notice and all information in its possession necessary to determine

[4] This relief comports with the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust that the U.S. Department of Justice and the Federal Trade Commission issued jointly on September 27, 1994, 4 Trade Reg. Rep. (CCH) ¶ 13,152, at 20,787–98, and in particular with the principles enunciated therein that a provider network (1) should not prevent the formation of rival networks; and (2) may not negotiate on behalf of providers, unless those providers share substantial financial risk or offer a new product to the market place. Statement 8, *id.* at 20,788–89; Statement 9, *id.* at 20,793–94, 20,796.

[5] Statements 2 and 3 of the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, 4 Trade Reg. Rep. (CCH) ¶ 13,152 at 20,775–81 (1994), discuss how to assess whether collateral agreements are reasonably necessary for the operation of a particular legitimate joint venture.

whether the above criteria have been met.

Under Section VIII(D), Heartland may employ or acquire, with plaintiff's approval, any physician who would cease practicing in Buchanan County but for Heartland's employment or acquisition.

Section IX of the proposed Final Judgment describes the circumstances under which defendants may seek a modification of the proposed Final Judgment. It provides that any defendant may move for a modification of the proposed Final Judgment, and plaintiff will reasonably consider an appropriate modification, in the event that any of the provisions of the proposed Final Judgment proves impracticable or in the event of a significant change in law or fact.

Section X of the proposed Final Judgment requires the defendants to implement a judgment compliance program. Section X(A) requires that within 60 days of entry of the Final Judgment, defendants must provide a copy of the proposed Final Judgment and the Competitive Impact Statement to certain officers and all directors. Sections X (B) and (C) require defendants to provide a copy of the proposed Final Judgment and Competitive Impact Statement to persons who assume those positions in the future and to brief such persons annually on the meaning and requirements of the proposed Final Judgment and the antitrust laws, including penalties for violating them. Section X(D) requires defendants to maintain records of such persons' written certifications indicating that they (1) have read, understand, and agree to abide by the terms of the proposed Final Judgment, (2) understand that their noncompliance with the proposed Final Judgment may result in conviction for criminal contempt of court, and imprisonment, and/or fine, and (3) have reported any violation of the proposed Final Judgment of which they are aware to counsel for defendants. Section X(E) requires defendants to maintain for inspection by plaintiff a record of recipients to whom the proposed Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding the proposed Final Judgment have been received.

The proposed Final Judgment also contains provisions in Section XI requiring defendants to certify their compliance with specified obligations of Section IV through X of the proposed Final Judgment. Section XII of the proposed Final Judgment sets forth a series of measures by which the plaintiff may have access to information needed to determine or secure defendants' compliance with the proposed Final Judgment. Section XIII provides that each defendant must notify plaintiff of any proposed change in corporate structure at least 30 days before that change to the extent the change may affect compliance obligations arising out of the proposed Final Judgment.

Finally, Section XV states that the decree expires five years from the date of entry, except that plaintiff during that five year period may, in its sole discretion, after consultation with defendants, extend for an additional five years all provisions of the decree except the provisions of Section VI(D), that portion of the Final Judgment dealing with Heartland's acquisition of physician practices.

C. Effect of the Proposed Final Judgment on Competition

1. The Prohibitions on Setting and Negotiating Fees and Other Contract Terms

The prohibitions on setting and negotiating fees and other contract terms set forth in Sections IV (C) and (D), V (C) and (D), and VI(B) provide defendants with essentially two options for complying with the proposed Final Judgment.[6] First, Health Choice may change its manner of operation and no longer set or negotiate fees on behalf of competing physicians, for example by using a ''messenger model,'' a term defined in the proposed Final Judgment. Second, Health Choice may restructure its ownership and provider panels to become a QMCP.[7]

Currently, SJPI owns 50% of Health Choice and includes among its shareholders competing physicians who do not share substantial financial risk. In addition, Heartland, which owns the other 50% of Health Choice, employs physicians who compete with the SJPI physicians and other physicians on the Health Choice provider panel. The SJPI and Heartland physicians on the provider panel also do not share financial risk. The proposed Final Judgment prevents Health Choice, under its present structure, from continuing to set or negotiate fees or other terms of reimbursement collectively on behalf of these competing physicians. (Section V(C).)[8] Such conduct would constitute naked price fixing. *Arizone* v. *Maricopa County Medical Soc'y,* 457 U.S. 332, 356–57 (1982).

The proposed Final Judgment does not, however, prohibit Health Choice as presently structured from engaging in activities that are not anticompetitive.[9] In particular, while the proposed Judgment enjoins Health Choice from engaging in price fixing or similar anticompetitive conduct, it permits Health Choice to use an agent or third party to facilitate the transfer of information between individual physicians and purchasers of physician services. Appropriately designed and administered, such messenger models rarely present substantial competitive concerns and indeed have the potential to reduce the transition costs of negotiations between health plans and numerous physicians.

The proposed Final Judgment makes clear that the critical feature of a properly devised and operated messenger model is that individual providers make their own separate decisions about whether to accept or reject a purchaser's proposal, independent of other physicians' decisions and without any influence by the messenger. (Section II(F).) The messenger may not, under the proposed Judgment, coordinate individual providers' responses to a particular proposal, disseminate to physicians the messenger's or other physicians' views or intentions concerning the proposal, act as an agent for collective negotiation and agreement, or otherwise serve to facilitate collusive behavior.[10] The

[6] For convenience, this Statement discusses Health Choice's options. However, the same options are available to SJPI and Heartland, should they choose to utilize them.

[7] Of course, Health Choice could simply cease operations and dissolve. Defendants have indicated, however, that they will not pursue that approach. In any event, the Judgment's prohibitions on setting and negotiating fees and other contract terms (as well as a number of other prohibitions) apply to any organization in which the defendants own an interest, not just to Health Choice.

[8] Similarly, Section IV(C) prevents SJPI from setting or negotiating fees and other contract terms for just SJPI physicians, and Sections (V(D) and VI(B) prevent physicians and Heartland from engaging in such conduct through their ownership of Health Choice.

[9] For example, nothing in the proposed Final Judgment prevents Health Choice from continuing to offer billing, utilization management, and third party administrator services, provided it does not violate the Judgment's prohibitions, in Sections V (A) and (B), on exclusivity and the collection and dissemination of competitively sensitive information.

[10] For example, it would be a violation of the proposed Final Judgment if the messenger selected a fee for a particular procedure from a range of fees previously authorized by the individual physician, or if the messenger were to convey collective price offers from physicians to purchasers or negotiate collective agreements with purchasers on behalf of physicians. This would be so even if individual physicians were given the opportunity to ''opt out'' of any agreement. In each instance, it would really be the messenger, not the individual physician, who would be making the critical decision, and the purchaser would be faced with the prospect of a collective response.

proper role of the messenger is simply to facilitate the transfer of information between purchasers of physician services and individual physicians or physician group practices and not to coordinate or otherwise influence the physicians decision-making process.[11]

If, on the other hand, Health Choice wants to negotiate on behalf of competing physicians, it must restructure itself to meet the requirements of a QMCP as set forth in the proposed Final Judgment. To comply, (1) the owners of members of Health Choice (to the extent they compete with other owners or members or compete with physicians on Health Choice's provider panels) must share substantial financial risk, and comprise no more than 30% of the physicians in any relevant market; *and* (2) to the extent Health Choice has a provider panel that exceeds 30% of the physicians in any relevant market, there must be a divergence of economic interest between the Health Choice owners and the subcontracting physicians, such that the owners have the incentive to bargain down the fees of the subcontracting physicians. (Section II(I)(2).) As explained below, the requirements of a QMCP are necessary to avoid the creation of a physician cartel while at the same time allowing payors access to such panel.

The financial risk-sharing requirement of a QMCP ensures that the physician owners in the venture share a clear economic incentive to achieve substantial cost savings and provide better services at lower prices to consumers. This requirement is applicable to all provider-controlled organizations since without this requirement a network of competing providers would have both the incentive and the ability to increase prices for health care services.

The requirement that a QMCP not include more than 30% of the local physicians in certain instances is designed to ensure that there are available sufficient remaining physicians in the market with the incentive to contract with competing managed care plans or to form their own plans. This limitation is particularly critical in this case in view of the defendants' prior conduct in forming negotiating groups with up to 85% of the local physicians.

Many employers and payors in the St. Joseph area indicated that they may want managed care products with all or many of the physicians in St. Joseph on the provider panel. The QMCP's subcontracting requirements are designed to let Health Choice (or any other QMCP) offer a large physician panel, but with restrictions to avoid the risk of competitive harm. To offer panels above 30%, Health Choice must operate with the same incentives as a nonprovider-controlled plan. Specifically, the owners of Health Choice must bear significant financial risk for the payments to, and utilization practices of, the panel physicians. These requirements prevent Health Choice from using the subcontracts as a mechanism for increasing fees for physician services.

Consequently, the proposed Final Judgment permits a QMCP to subcontract with any number of physicians in a market provided three important safeguards are met. Under Section II(I)(2) of the proposed Final Judgment, the subcontracting physician panel may exceed the 30% limitation only if (1) there is a sufficient divergence of economic interest between those subcontracting physicians and the owners such that the owners have the incentive to bargain down the fees of the subcontracting physicians, (2) the organization does not directly pass through to the payor substantial liability for making payments to the subcontracting physicians, and (3) the organization does not compensate those subcontracting physicians in a manner that substantially replicates ownership.

Health Choice would meet the subcontracting requirements if, for example, Health Choice were compensated on a capitated, per diem, or a diagnostic related group basis and, in turn, reimbursed subcontracting physicians pursuant to a fee schedule. In such a situation, an increase in the fee schedule to subcontracting physicians during the term of the Health Choice contract with the particular payor would not be directly passed through to the payor and, instead, would be borne by Health Choice itself. This would provide a substantial incentive for Health Choice to bargain down its fees to the subcontracting physicians.

On the other hand, the subcontracting requirements would not be met if a Health Choice contract with a payor were structured so that significant changes in the payments by Health Choice to its physicians directly affected payments from the payor to Health Choice, or if the payor directly bears the risk for paying the panel physicians or pays the panel physicians pursuant to a fee-for-service schedule. The requirements would also not be satisfied if contracts between Health Choice and the subcontracting physicians provided that payments to the physicians depended on, or varied in response to, the terms and conditions of Health Choice's contracts with payors.[12] Any of these scenarios would permit Health Choice to pass through to payors, rather than bear, the risk that its provider panel will charge fees that are too high or deliver services ineffectively.[13]

2. Prohibition on Exclusivity

Sections IV(A), V(A), and VI(B) of the proposed Final Judgment enjoin defendants from requiring physicians to deal exclusively with their managed care plans or urging physicians not to contract with other payors. Health choice is also required to inform both its providers and payors with which it has or is negotiating contracts, that each provider is free to contract separately with any managed care plan on any terms. (Section VII(A) (1) and (2).) These provisions will encourage the development of competing managed care plans in the St. Joseph area by ensuring that physicians remain free to decide individually whether, and on what terms, to participate in any managed care plan.

3. Physician Acquisitions

Section VI(D) of the proposed Final Judgment enjoins Heartland from acquiring additional family practice and general internal medicine physician practices in Buchanan County without plaintiff's prior written approval, and from acquiring any other active physician practice in Buchanan County without 90 days' prior notification.[14]

[11] For example, the messenger may convey to a physician objective or empirical information about proposed contract terms, convey to a purchaser any individual physician's acceptance or rejection of a contract offer, canvass member physicians for the rates at which each would be willing to contract even before a purchaser's offer is made, and charge a reasonable, non-discriminatory fee for messenger services, provided the messenger otherwise acts consistently with the proposed Final Judgment.

[12] Nothing in the proposed Final Judgment prohibits Health Choice or any other QMCP from entering into arrangements that shift risk to providers so long as those provisions are consistent with the criteria for a QMCP set forth in Section II(I) of the Judgment.

[13] Similarly, Health Choice would fail the ownership replication restriction of Section II(I) of the proposed Final Judgment if, for example, the owners paid themselves a dividend and then, through declaration of a bonus, paid the same or similar amount to the subcontracting physicians. The same would be true if the owners otherwise structured dividends, bonuses, and incentive payments in such a way that ensures that subcontracting and owning physicians receive equal overall compensation.

[14] By letter dated June 8, 1995, from Chief of Staff, Antitrust Division, Lawrence R. Fullerton, to counsel for Heartland, Thomas P. Watkins, Esq., plaintiff has indicated to Heartland that it does not intend to challenge the acquisition of Internal Medicine Associates of St. Joseph, a three-physician

These provisions will prevent Heartland from obtaining such physician concentration that would permit it to raise prices for physician services above competitive levels or otherwise thwart the ability of competing managed care plans to enter and compete effectively in St. Joseph.[15]

4. Other Substantive Provisions

Sections IV(B), V(B), and VI(A) of the proposed Final Judgment enjoin the disclosure to any physician of any financial or competitively sensitive business information about any competing physician or competitor of defendants. These provisions will ensure that defendants do not exchange information that could lead to price fixing or other anticompetitive harm.

Section VII(B)(3) provides plaintiff access to Heartland's credentialing files to ensure that Heartland does not abuse its credentialing authority by denying privileges to or otherwise disciplining physicians who participate in a competing managed care plan. Similarly, Section VII(B)(1) requires Heartland to abide by its formal written referral policy regarding ancillary services to ensure that Heartland will not abuse its control over inpatient hospital services to reduce or eliminate competition among providers of ancillary services in St. Joseph.

Section VI(E) enjoins Heartland from requiring managed care plans to use other Heartland services such as its utilization review program or managed care plan in order to obtain inpatient hospital services. This Section will permit managed care plans to use their own physician panels, utilization review, and fee schedule, thereby fostering the development of truly competitive health care delivery systems in St. Joseph.

Section VII(B)(2) requires Heartland to file annually with plaintiff a report of the rates, terms, and conditions for inpatient hospital services that Heartland provides any managed care plan or hospice program. This will assist plaintiff in assessing whether Heartland has abused its power in the inpatient hospital market.

Finally, Section XI(C) requires any defendant owning an interest in a QMCP that includes any single physician practice group comprising more than 30% of the physicians in any relevant market to notify plaintiff if the practice group acquires additional physicians. This will ensure that the United States knows of any such acquisition and can evaluate its potential anticompetitive effects.

5. Conclusion

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy. The proposed Final Judgment's injunctions will restore the benefits of free and open competition in St. Joseph and will provide consumers with a border selection of competitive health care plans.

IV

*Alternatives to the Proposed Final Judgment*

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to both the United States and defendants and is not warranted because the proposed Final Judgment provides all of the relief necessary to remedy the violations of the Sherman Act alleged in the Complaint.

V

*Remedies Available to Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and a reasonable attorney's fee. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against one or more defendants in this matter.

VI

*Procedures Available for Modification of the Proposed Final Judgment*

As provided by Sections 2 (b) and (d) of the APPA, 15 U.S.C. 16 (b) and (d), any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final judgment at any time before its entry, if the Department should determine that some modification of the Final Judgment is necessary for the public interest. Moreover, the proposed Final Judgment provides in section XIV that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VII

*Determinative Documents*

No materials and documents of the type described in Section 2(b) of the APPA, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Dated: September 13, 1995.

Respectfully submitted,

Edward D. Eliasberg, Jr.,

John B. Arnett, Sr.,

Dando B. Cellini,

Mark J. Botti,

Gregory S. Asciolla,

*Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, N.W., Room 9420, Washington, D.C. 20530, (202) 307–0808.*

[FR Doc. 95–24365 Filed 10–2–95; 8:45 am]

BILLING CODE 4410–01–M

practice group providing general internal medicine services in St. Joseph. (*See* Attachment.)

[15] The proposed Final Judgment permits Heartland to employ or acquire other physician practices where the employment or acquisition would not result in a substantial lessening of competition in the St. Joseph area either because (1) the physician derived only limited revenues from patients in Buchanan County, (2) Heartland actively recruited the physician to the St. Joseph area, or (3) the physician would exit the market but for Heartland's employment or acquisition. (Section VIII (B), (C) and (d).)

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Census of Fatal Occupational Injuries

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an

opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Census of Fatal Occupational Injuries.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

**DATES:** Written comments must be submitted on or before December 4, 1995.

**ADDRESSES:** Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue N.E., Washington D.C. 20212. For further information contact Ms. Kurz on 202–606–7628 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

I. Background

BLS was delegated responsibility by the Secretary of Labor for implementing Section 24(a) of the Occupational Safety and Health Act of 1970. This section states that ''the Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses. * * *'' Prior to the implementation of the Census of Fatal Occupational Inquries (CFOI), BLS generated estimates of occupational fatalities for private sector employers from a sample survey of about 280,000 establishments. Studies showed that occupational fatalities were underreported in those estimates as well as those compiled by regulatory, vital statistics, and workers' compensation systems. Estimates varied widely between 3,000 and 10,000 annually. In addition, information needed to develop prevention strategies was often missing from these earlier systems.

In the late 1980s, the National Academy of Sciences study, *Counting Injuries and Illnesses in the Workplace,* and the report, *Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping,* emphasized the need for BLS to compile a complete roster of work-related fatalities because of concern over the accuracy of using a sample survey to estimate the incidence of occupational fatalities. These studies also recommended the use of all available data sources to compile detailed information for fatality prevention efforts. BLS tested the feasibility of collecting fatality data in this manner in 1989 and 1990. The resulting CFOI was implemented in 32 States in 1991. National data covering all 50 States and the District of Columbia were compiled and published for 1992–1994, approximately eight months after each calendar year.

The CFOI compiles comprehensive, accurate, and timely information on work-injury fatalities needed to develop effective prevention strategies. The system collects information concerning the incident, demographic information on the deceased, and characteristics of the employer.

Data are used to:

—Develop employee safety training programs;
—Develop and assess the effectiveness of safety standards;
—Conduct research for developing prevention strategies; and
—Compare fatalities between States.

In addition, States use the data to publish State reports, to identify State-specific hazards, to allocate resources for promoting safety in the workplace, and to evaluate the quality of work life in the States.

II. Current Actions

In 1994, more than 6,500 workers lost their lives as a result of injuries received on the job. This official, systematic, verifiable count mutes controversy over the various counts from different sources. The CFOI count has been adopted by the National Safety Council and other organizations as the sole source of a comprehensive count of fatal work injuries for the United States. If this information were not collected, the confusion over the number of, and patterns in, fatal occupational injuries would continue, thus hampering prevention efforts. By providing timely occupational fatality data, the CFOI program provides safety and health managers the information necessary to respond to emerging workplace hazards.

In 1994, BLS Washington staff responded to over 2,000 requests for CFOI data from various organizations. (This figure excludes requests received by the States for State-specific data.) The CFOI research file, made available to safety and health groups, is being used by 30 organizations to conduct studies on specific topics such as protective equipment use, forklift injuries, tractor-trailer tipovers, powerline electrocutions, homicides, construction industry falls, highway construction fatalities, and logging and forestry fatalities. (A current list of research articles and reports that include CFOI data can be found in BLS Report 891, dated June 1995, Appendix F. Copies of this report are available upon request.)

*Type of Review:* Extension.

*Agency:* Bureau of Labor statistics.

*Title:* Census of Fatal Occupational Injuries.

*OMB Number:* 1220–0133.

*Frequency:* On Occasion.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Number of Respondents:* 2,665.

*Estimated Time Per Response:* 11 Minutes.

*Total Burden Hours:* 5,000 Hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, D.C., this 26th day of September, 1995.

Peter T. Spolarich,

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 95–24503 Filed 10–2–95; 8:45 am]

BILLING CODE 4510–24–M

## NATIONAL BANKRUPTCY REVIEW COMMISSION

### Meeting

**AGENCY:** National Bankruptcy Review Commission.

**ACTION:** Notice of public meeting.

**TIME AND DATES:** October 20, 1995; 10 a.m. to 6 p.m.

**PLACE:** Thurgood Marshall Building, Federal Judicial Center, Education Center/Auditorium, One Columbus Circle, N.E., Washington, D.C. 20002. The public should enter through the South Lobby entrance of the Thurgood Marshall Building.

**STATUS:** The meeting will be open to the public but a part will be closed to the public.

**MATTERS TO BE CONSIDERED:**

*Portions open to the public:* This will be the first meeting for the NBRC and will be the organizational meeting for the Commission. The matters to be discussed will cover organizational matters for the NBRC and will focus on a discussion of an initial work plan for the life of the NBRC in accordance with

its statutory duties. The open portion of the meeting will cover ethical and administrative requirements of the NBRC Members and staff; budget; future meetings and public hearings; a work plan for the NBRC; and, other NBRC business.

*Portions closed to the public:* The portion of the meeting closed to the public, for approximately one hour from 10:00 a.m. until 11:00 a.m., will cover internal personnel matters.

Authority: The meeting will be the first meeting for the National Bankruptcy Review Commission (NBRC), a commission composed of nine members appointed by the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Chief Justice of the United States. The NBRC was established by Pub. L. 103–394 (Title VI). The duties of the Commission are to investigate and study issues and problems relating to the ''Bankruptcy Code''; to evaluate the advisability of proposals and current arrangements with respect to bankruptcy; to solicit divergent views of all parties concerned with the operation of the bankruptcy system; and, to prepare and submit to Congress, the Chief Justice and the President a report with the findings and conclusions of the NBRC, together with its recommendations for legislative or administrative action as the NBRC considers appropriate.

**CONTACT PERSONS FOR FURTHER INFORMATION:** Contact Jarilyn Dupont or Carmelita Pratt at the National Bankruptcy Review Commission, c/o Administrative Office of the U.S. Courts, One Columbus Circle, N.E., Suite 4–170, Washington, D.C., (202) 273–1813.

Jarilyn Dupont,

*Executive Director/General Counsel.*

[FR Doc. 95–24483 Filed 10–2–95; 8:45 am]

BILLING CODE 6820–36–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; International Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a teleconference of the International Advisory Panel (US Host Organizations Section) to the National Council on the Arts will take place on October 23, 1995 from 12 p.m. to 2 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, this session will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 26, 1995.

Yvonne M. Sabine,

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 95–24592 Filed 10–2–95; 8:45 am]

BILLING CODE 4537–01–M

### National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XXXIV

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on October 18, 1995 from 9 a.m. to 12 p.m. This meeting will be held in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis and will feature a discussion of the Committee's forthcoming *Report to the President* and an update on the status of staff research for this report. The Committee will also consider the impact of recent budget cuts on the federal cultural agencies.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: September 26, 1995.

Yvonne M. Sabine,

*Director, Council & Panel Operations, National Endowment for the Arts.*

[FR Doc. 95–24591 Filed 10–2–95; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 24, 1995, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on September 25, 1995 to the following applicants:

Carol M. Vleck and Theresa Bucher, Permit #96–001
Diana W. Freckman, Permit #96–002
Wayne Z. Trivelpiece, Permit #965–003
Donald B. Siniff, Permits #96–004 and #96–005
Colin Harris, Permit #96–006
Arthur L. DeVries, Permits #96–007 and #96–008
Brenda Hall and George Denton, Permit #96–009
Ronald G. Koger, Permits #96–010, #96–012, and #96–018
Donald T. Manahan, Permit #96–011
James A. Raymond, Permit #96–014
Gerald L. Kooyman, Permit #96–015
Warwick E. Vincent, Permit #96–016
John Splettstoesser, Permit #96–019
Bruce D. Marsh, Permit #96–020

Nadene G. Kennedy,

*Permit Office.*

[FR Doc. 95–24505 Filed 10–2–95; 8:45 am]

BILLING CODE 7555–01–M

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Cunningham or D. Kristen Larsen, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On May 30, 1995, and June 29, 1995, the National Science Foundation published a notice in the Federal Register of waste management permit applications received. Permits were issued on September 7, 1995 to the following applicants.

Adventure Network International (ANI), Permit #96WM2-ANI

Skip Novak, Permit #96WM3–PELAGIC

Robert S. Cunningham,

*NEPA Compliance Manager, Office of Polar Programs, National Science Foundation.*

[FR Doc. 95–24506 Filed 10–2–95; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–440]**

## The Cleveland Electric Illuminating Company, et al.; Perry Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of several exemptions from the requirements of 10 CFR Part 50, Appendix J to the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

Environmental Assessment

*Identification of the Proposed Action*

The proposed action would grant exemptions from the requirements of Sections III.A.5(b)(2), III.B.3, III.C.3, III.A.1(d), III.D.1(a), and III.D.3 of Appendix J to 10 CFR Part 50. Section III.A.5(b)(2) requires that the measured leakage for the containment integrated leak rate test ($L_{am}$) be less than 75% of the maximum allowable leakage rate (0.75 $L_a$). The proposed exemption would permit separate treatment of main steam isolation valve leakage from the containment integrated leak rate tests.

Sections III.B.3 and III.C.3 require that the combined leakage of valves and penetrations subject to Type B and C local leak rate testing be less than 0.6 times the maximum allowable leakage rate (0.6 $L_a$). The proposed exemption would permit separate treatment of main steam isolation valve leakage from local leak rate testing.

Section III.A.1(d) requires that all fluid systems that would be open to containment following post-accident conditions, be vented and drained prior to conducting the containment integrated leak rate test. The proposed exemption would permit separate treatment of the main steam line penetrations and would not require them to be vented and drained prior to conducting containment integrated leak rate tests.

Section III.D.1.(a) requires that a set of three Type A tests be performed at approximately equal intervals during each 10-year service period and that the third test of each set be conducted when the plant is shut down for the 10-year plant inservice inspection (ISI). The proposed exemption would permit performance of the third Type A test at times other than when the plant is shut down for the 10-year plant ISI.

Section III.D.3 requires that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The proposed exemption would allow the licensee to perform the required Type C tests while the plant is at power.

The proposed action is in accordance with the licensee's application for exemption dated October 21, 1994.

*The Need for the Proposed Action*

Assumptions used in both the Perry FSAR and Standard Review Plan 15.6.5, Appendix D, ''Radiological Consequences of a Design Basis Loss-of-Coolant Accident,'' for computing the total radiological consequences from a hypothetical loss-of-coolant accident (LOCA), include separate contributions for the containment leak rate and the main steam line isolation valve leak rate. The value for the maximum allowable containment leak rate, $L_a$, of 0.2%/day, was established based on separate accounting for the main steam line isolation valve leak rate. The proposed exemption from Section III.A.5 (b)(2) is needed to allow separate treatment of main steam line isolation valve leakage from the containment integrated leak rate.

Sections III.B.3 and III.C.3 of Appendix J state that the combined leakage from all valves and penetrations subject to Type B and C local leak rate testing shall be less than 0.6 $L_a$. However, separate leakage limits have been established for the main steam isolation valves at Perry. An exemption from Sections III.B.3 and III.C.3 is needed to allow separate treatment of main steam isolation valve leakage from local leak rate testing.

Section III.A.1(d) requires that those systems that would be exposed to the containment atmosphere following a design basis LOCA, be vented and drained prior to conducting the containment integrated leak rate test. However, the main steam piping between the inboard and outboard isolation valves at Perry are filled with water during the containment integrated leak rate tests. This practice ensures that any leakage through the isolation valves will not contribute to the overall containment test results. An exemption from Section III.A.1(d) is needed to allow this alternative practice.

The proposed exemption from 10 CFR Part, Appendix J, Section III.D.1(a), is needed to avoid unnecessary restraints in outage scheduling. The licensee proposed to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the ISI 10-year interval.

Section III.D.3 of Appendix J to 10 CFR part 50 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The proposed exemption is needed to allow the option to perform Type C testing at power.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that the exemption would not significantly increase the probability or amount of expected primary containment leakage, and that containment integrity would thus be maintained.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no

significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement related to the operation of the Perry Nuclear Power Plant, Units 1 and 2,'' dated August 1982.

*Agencies and Persons Consulted*

In accordance with its stated policy, on September 13, 1995, the staff consulted with the Ohio state official, Lawrence Grove, of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 21, 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 Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 26th day of September 1995.

For The Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

*Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–24553 Filed 10–2–95; 8:45 am]

BILLING CODE 7590–01–P

## Advisory Committee on Reactor Safeguards Ad Hoc Subcommittee Meeting on Watts Bar, Notice of Meeting

The ACRS Ad Hoc Subcommittee on Watts Bar will hold a meeting on November 1, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, November 1, 1995—8:30 a.m. Until 5 p.m.*

The Subcommittee will discuss the status of the issues associated with the operating license review of the Watts Bar Nuclear Plant Unit 1, including outstanding licensing issues, plant design changes made since 1982, and the resolution of the identified quality assurance weaknesses. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and the Tennessee Valley Authority, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel Dudley, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: September 26, 1995.

Sam Duraiswamy,

*Chief, Nuclear Reactors Branch.*

[FR Doc. 95–24544 Filed 10–2–95; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–440]**

## Cleveland Electric Illuminating and Toledo Edison Company, et al.; Notice of Transfer of Ownership of Perry Nuclear Power Plant

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under Title 10 of the *Code of Federal Regulations* (CFR), Section 50.80 of the transfer of 19.91 percent of the ownership of the Perry Nuclear Power Plant (PNPP) from the Toledo Edison Company (TE) to a company resulting from the merger of TE and The Cleveland Electric Illuminating Company (CEI). Toledo Edison will transfer all of its interest in the ownership of PNPP as described in License No. NPF–58 to such company. The Centerior Service Company (CSC) and CEI are authorized to act as agents for Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company and have exclusive responsibility and control over the physical construction, operation and maintenance of the PNPP. Toledo Edison Company, CSC, and CEI are wholly-owned subsidiaries of the Centerior Energy Corporation. By letter dated June 2, 1994, as supplemented by letters of July 29, 1994, November 10, 1994, April 24, 1995, and September 20, 1995, CEI informed the Commission that the shares of TE, owned by Centerior Energy Corporation, will be converted into new shares of CEI and then all CEI shares will be converted into shares of the merged company.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control

is qualified to hold the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. CEI has requested consent under 10 CFR 50.80 to transfer of the license effectuated by the change in control of such ownership interest in the PNPP.

For further details with respect to this action, see the June 2, 1994 letter, and supplemental letters dated July 29, 1994, November 10, 1994, April 24, 1995, and September 20, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland this 27th day of September 1995.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

*Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–24554 Filed 10–2–95; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket No. 50–346]**

## Toledo Edison Company, Notice of Transfer of License for Davis-Besse Nuclear Power Station

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval, under Title 10 of the *Code of Federal Regulations* (CFR), Section 50.80, of the transfer of License No. NPF–3 for the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1. Currently, DBNPS is owned by Toledo Edison Company (TE), The Cleveland Electric Illuminating Company, and Centerior Service Company (CSC). Under license NPF–3, TE and CSC, acting as agents and representatives of the owners, have the exclusive responsibility and control over the physical construction, operation and maintenance of the DBNPS. As a result of the merger, a transfer will be made of 48.62 percent of DBNPS owned by TE to the company resulting from the merger of TE into CEI. After approval of the merger by all regulatory agencies, CSC and the merged company, acting as agents and representatives of the owners, will have the exclusive responsibility and control over the physical construction, operation and maintenance of the DBNPS. TE, CSC, and CEI are wholly-owned subsidiaries of the Centerior Energy Corporation. By letter dated June 6, 1994, as supplemented by letters of July 20, 1994, November 11, 1994, April 12, 1995, and September 19, 1995, TE informed the Commission that the shares of TE, owned by Centerior Energy Corporation, will be converted into new shares of CEI and then all CEI shares will be converted into shares of the merged company.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to hold the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. TE has requested consent under 10 CFR 50.80 to transfer of the license effectuated by the change in control of such ownership interest in the Davis-Besse Nuclear Power Station, Unit No. 1.

For further details with respect to this action, see the June 6, 1994 letter, and supplemental letters dated July 20, 1994, November 11, 1994, April 12, 1995, and September 19, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland this 27th day of September 1995.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

*Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–24555 Filed 10–2–95; 8:45 am]

BILLING CODE 7590–01–P

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# OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Renewal of Treatment on Government Procurement of Products From Countries Designated Under the Caribbean Basin Economy Recovery Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Renewal of preferential treatment extended to CBI beneficiaries under section 1–201 of Executive Order 12260 of December 31, 1980.

**SUMMARY:** Under the authority delegated to me by the President in section 1–201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of countries and territories, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*), shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 1996. Such treatment shall not apply to products originating in these countries that are excluded from duty free treatment under 19 U.S.C. 2703(b). Eligibility for preferential treatment shall continue to be conditioned on the beneficiary retaining its status as such under the Caribbean Basin Economic Recovery Act. Subsequent renewal of this treatment beyond September 30, 1996, will be subject to progress made by individual beneficiaries in initiating and pursuing negotiations to accede to the WTO Government Procurement Agreement.

**DATES:** This renewal is effective on September 30, 1995.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

**FOR FURTHER INFORMATION CONTACT:** Mark Linscott, Director of Government Procurement, (202) 395–3063, or Sean Murphy, Director of Caribbean and Central American Affairs.

Michael Kantor,

*United States Trade Representative.*

[FR Doc. 95–24542 Filed 10–2–95; 8:45 am]

BILLING CODE 3190–01–M

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# OFFICE OF PERSONNEL MANAGEMENT

## Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 26
Thursday, October 30
Thursday, November 16
Thursday, November 30
Thursday, December 14

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the

Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: September 18, 1995.

Anthony F. Ingrassia,

*Chairman, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 95–24514 Filed 10–2–95; 8:45 am]

**BILLING CODE 6325–01–M**

## The National Partnership Council

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The Office of Personnel Management (OPM) announces the next meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

**TIME AND PLACE:** The Council will meet October 11, 1995, at 1 p.m., in the OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located in the first floor.

**TYPE OF MEETING:** This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

**POINT OF CONTACT:** Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

**SUPPLEMENTARY INFORMATION:** The Council will receive reports on and discuss activities contained in the strategic action plan for 1995 that was adopted at the January 10, 1995, meeting.

Public Participation:

We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Mr. Douglas K. Walker at the address shown above. Written comments should be received by October 6, in order to be considered at the October 11, meeting.

Office of Personnel Management.

James B. King,

*Director.*

[FR Doc. 95–24515 Filed 10–2–95; 8:45 am]

**BILLING CODE 6325–01–M**

## POSTAL RATE COMMISSION

### Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

**[Order No. 1082; Docket No. A95–22]**

Issued September 28, 1995.

*In the Matter of:* Lynch, Maryland 21646 (Patricia Helwick, Petitioner).

*Docket Number:* A95–22.

*Name of Affected Post Office:* Lynch, Maryland 21646.

*Name(s) of Petitioner(s):* Patricia Helwick.

*Type of Determination:* Closing.

*Date of Filing of Appeal Papers:* September 25, 1995.

*Categories of Issues Apparently Raised:*

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision with 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

*The Commission orders:*

(a) The Postal Service shall file the record in this appeal by October 10, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission

Cyril J. Pittack,

*Acting Secretary.*

Appendix

September 25, 1995 Filing of Appeal letter

September 28, 1995 Commission Notice and Order of Filing of Appeal

October 20, 1995 Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]

October 30, 1995 Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115 (a) and (b)]

November 20, 1995 Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]

December 4, 1995 Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]

December 11, 1995 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]

January 23, 1996 Expiration of the Commission's 120-day decisional schedule [*see* 39 C.F.R. § 404(b)(5)]

[FR Doc. 95–24578 Filed 10–2–95; 8:45 am]

BILLING CODE 7710–FR–M

**[Docket No. A95–21; Order No. 1081]**

## Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued September 27, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the matter of: Macon, Virginia 23101 (Gloria Buren, Petitioner).

*Docket Number:* A95–21.

*Name of Affected Post Office:* Macon, Virginia 23101.

*Name(s) of Petitioner(s):* Gloria Buren.

*Type of Determination:* Closing.

*Date of Filing of Appeal Papers:* September 22, 1995.

*Categories of Issues Apparently Raised:*

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

*The Commission orders:*

(a) The Postal Service shall file the record in this appeal by October 6, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Cyril J. Pittack,

*Acting Secretary.*

Appendix

September 22, 1995 Filing of Appeal letter

September 27, 1995 Commission Notice and Order of Filing of Appeal

October 17, 1995 Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]

October 27, 1995 Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]

November 16, 1995 Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]

December 1, 1995 Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]

December 8, 1995 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]

January 20, 1996 Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–24477 Filed 10–2–95; 8:45 am]

BILLING CODE 7710–FW–P

## PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

### Meeting

**AGENCY:** Presidential Advisory Committee on Gulf War Veterans' Illnesses.

**ACTION:** Notice of open meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting concerning the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

Tentative Agenda

*Wednesday, October 18, 1995*

9:00 a.m. Call to order and opening remarks

9:10 a.m. Followup on clinical issues panel meeting

10:30 a.m. Break

10:45 a.m. Briefing on Department of Defense Persian Gulf Investigative Team and declassification efforts

12:15 p.m. Lunch

1:30 p.m. Briefings on outreach initiatives

4:30 p.m. Meeting recessed

*Thursday, October 19, 1995*

8:30 a.m. Public comment

10:00 a.m. Break

10:15 a.m. Briefings on research issues

11:45 p.m. Lunch

12:45 p.m. Briefings on research issues

2:00 p.m. Discussion of strategy for review of implementation of recommendations from past reports

2:30 p.m. Meeting adjourns

A final agenda will be available at the meeting.

*Place:* Hyatt Arlington (Rosslyn), 1325 Wilson Boulevard, Arlington, VA 22209.

*For Further information contact:* Dr. Lois M. Joellenbeck, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, D.C. 20005, telephone 202–761–0066, fax: 202–761–0310.

*Public Participation:* Members of the public who wish to present oral statements during the panel meeting should contact the Advisory Committee at the address or telephone number listed above at least five business days prior to the meeting. This panel has a particular interest in hearing about the experiences of veterans of the Persian Gulf War with the DoD and VA clinical systems. Reasonable provisions will be made to include presentations on the agenda, and requests from individuals who have not yet had an opportunity to address the Advisory Committee will take priority. The panel Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so at any time.

*Supplementary information:* The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members are individuals with expertise relevant to the functions of the committee, and are appointed by the President from non-Federal sectors.

Dated: September 28, 1995.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–24575 Filed 10–2–95; 8:45 am]

BILLING CODE 5000–04–M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by the Office of Management and Budget

*Agency Clearance Officer:* Michael E. Bartell, (202) 942–8800

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

*Approval; Proposed amendments to:*
Rule 17j–1, File No. 270–239;
Rule 204–2, File No. 270–215;
Form N–1A, File No. 270–21;
Form N–2, File No. 270–21;
Form N–3, File No. 270–281;
Form N–5, File No. 270–172;
Form N–8B–2, File No. 270–186;
Form S–6, File No. 270–181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted for OMB approval proposed amendments to the following rules and forms:

The proposed amendments to Rule 17j–1 under the Investment Company Act would enhance fund oversight of personal investment activities by requiring the management of each Rule 17j–1 organization to provide the appropriate fund's board of directors with an annual report describing issues that have arisen under the organization's code of ethics. Additionally, the proposed amendments would require certain affiliated persons of Rule 17j–1 organization (''access persons'') to provide the organization with information about all securities held by the access persons at the time they become access persons. The proposed amendments also would require access persons to provide certain additional information on the quarterly reports that they must provide to Rule 17j–1 organizations under the current version of the rule. It is estimated that 4,040 funds, 640 investment advisers and 230 principal underwriters would incur 10 burden hours to comply with the rule, as proposed to be amended.

Rule 204–2 sets forth requirements for keeping, maintaining and preserving specified books and records by registered investment advisers, including requirements for maintaining records of securities transactions engaged in by advisers and their representatives. The proposed amendments would expand the list of securities exempt from these recordkeeping requirements, thereby reducing the reporting and recordkeeping burden on advisers and their representatives. It is estimated that the proposed amendments to rule 204–2 would reduce the burden of compliance with the rule so that it would take each of the 22,000 registered investment advisers 235.47 hours annually to comply with the rule.

The registration forms are used by funds to register their securities. The information in these forms is publicly available. Proposed amendments to the registration forms would require funds to disclose whether or not their personnel may invest in securities, including securities purchased or held by the funds. Additionally, the proposed amendments to these registration forms would require funds to file with the Commission the codes of ethics applicable to the funds as exhibits to their registration statements.

It is estimated that the burden of complying with the registration forms, if amended as proposed, would be 1,065.27 hours for Form N–1A, 1,634.42 hours for Form N–2, 518.85 hours for Form N–3, 352 hours for Form N–5, 1,628 hours for Form N–8B–2, and 35.2 hours for Form S–6. Although Form S–6 is not being proposed to be amended, the burden of complying with that form would change as a result of the proposed amendments to Form N–8B–2 because registrants complying with Form S–6 must refer to items in Form N–8B–2.

General comments and comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W, Washington, D.C. 20549, and to the Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act numbers 3235–0224 (Rule 17j–1), 3235–0278 (Rule 204–2), 3235–0307 (Form N–1A), 3235–0026 (Form N–2), 3235–0316 (Form N–3), 3235–0169) (Form N–5), 3235–0186 (Form N–8B–2), and 3235–0184 (Form S–6), Office of Management and Budget, Room 3228, New Executive Office Building, Washington, D.C. 20503.

Dated: September 12, 1995.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 95–24486 Filed 10–2–95; 8:45 am]

**BILLING CODE 8010–01–M**

**[Release No. 34–36283; File No. SR–Amex–95–26]**

## Self-Regulatory Organizations; American Stock Exchange, Inc; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 3 and 4 to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Options on the Morgan Stanley High Technology 35 Index

September 26, 1995.

### I. Introduction

On June 29, 1995, the American Stock Exchange, Inc. (''Amex' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Morgan Stanley High Technology 35 Index (''Tech 35 Index'' or ''Index''). Notice of the proposed rule change appeared in the Federal Register on July 13, 1995.[3] No comment letters were received on the proposed rule change. The Exchange subsequently submitted Amendment No. 1 to the proposed rule change on August 10, 1995,[4]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35944 (July 7, 1995), 60 FR 37500.

[4] In Amendment No. 1, the Exchange proposed: (1) that if a determination is made to increase the number of components in the Index to more than 46 or decrease the number to less than 24, the Exchange will obtain Commission approval pursuant to Section 19(b) of the Act prior to making such a change; (2) that all securities placed on a Replacement List (as defined herein) provided to the Exchange must have a share price of at least $7.50 at the time the list is provided to the Exchange and also at the time a replacement security chosen from a Replacement List is announced as an addition to the Index; (3) that the Exchange will be required, after each quarterly review, to replace component securities that fail to meet the maintenance criteria discussed herein; (4) that if a component remains in the Index following a merger or consolidation, the number of shares of that security in the Index will be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index; (5) the Exchange will review on a quarterly basis, whether the component securities continue to meet the required options eligibility standards discussed herein; and (6) to maintain the Index so that if at any time between annual rebalancings the top five component securities, by weight, account for more than one-third of the weight of the Index, the Amex will rebalance the Index after the close of trading on Expiration Friday (as defined herein) in the next month in the March cycle. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated August 10, 1995 (''Amendment No. 1'').

Amendment No. 2 on August 15, 1995,[5] Amendment No. 3 on September 6, 1995,[6] and Amendment No. 4 on September 19, 1995.[7] This order approves the Exchange's proposal, as amended.

II. Description of Proposal

*A. General*

The Amex proposes to trade options on the Tech 35 Index, a new stock index developed by Morgan Stanley & Co. Incorporated (''Morgan Stanley'') based on technology stocks that are traded on the Amex, the New York Stock Exchange, Inc. (''NYSE''), or are National Market securities traded through Nasdaq. In addition, the Amex proposes to amend Amex Rule 902C(d) to include the Tec 35 Index in the disclaimer provisions of that rule.[8] The Amex also proposes to list long-term options on the Index having up to 36 months to expiration. In lieu of such long-term options on the full value of the Index, the Amex may instead list long-term options based on one-tenth of the value of the Tech 35 Index. These long-term options on either the full or reduced value of the Index are referred to as ''Tech 35 LEAPS'' or ''Index LEAPS.'' Tech 35 LEAPS will trade independent of and in addition to regular Index options traded on the Exchange. However, as discussed below, position and exercise limits of Index LEAPS (both full and reduced-value) and regular Index options will be aggregated.

*B. Composition of the Index*

The Index is comprised of 35 large, actively traded, technology stocks. Included in this group are companies in the following industries: computer services, design software, server software, PC software and new media, networking and telecommunications equipment, server hardware, PC hardware and peripherals, specialized systems, and semiconductors.[9] The Exchange will use an ''equal dollar-weighted'' method to calculate the value of the Index.[10] The Index was initialized at a level of 200 as of the close of trading on December 16, 1994. As of the close of trading on September 5, 1995, the Index was valued at 300.0. The market capitalizations of the individual stocks in the Index as of the close of trading on June 15, 1995, ranged from a high of $54.0 billion to a low of $1.1 billion, with the mean and median being $11.0 billion and $5.2 billion, respectively. The market capitalization of all the stocks in the Index on that date was approximately $386.7 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 588.6 million shares to a low of 19.9 million shares. In addition, the average monthly trading volume of the stocks in the Index, for the six-month period from December 1, 1994 through May 31, 1995, ranged from a high of 63.3 million shares per month to a low of 4.5 million shares per month, with the mean and median being 24.1 million and 14.4 million shares, respectively. Lastly, as of the close on June 15, 1995, no one stock accounted for more than 3.98% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 18.25% of the Index's value.

*C. Eligibility Standards for the Inclusion Component Stocks in the Index*

The Tech 35 Index conforms with Exchange Rule 901C, which specifies criteria for the inclusion of stocks in an index on which standardized options will be traded on the Exchange. In addition, Morgan Stanley has included in the Index only those stocks that meet the following standards: (1) a minimum market capitalization of $75 million; (2) average monthly trading volume of at least one million shares during the preceding six month period; (3) each component security must be traded on the Amex or the NYSE, or must be a National Market security traded through Nasdaq; and (4) upon annual rebalancing, at least 90% of the Index's numerical value must satisfy the then current criteria for standardized options trading set forth in Exchange Rule 915.[11]

*D. Calculation of the Index*

The Index will be calculated using an ''equal dollar-weighting'' methodology designed to ensure that each of the component stocks are represented in approximately ''equal'' dollar amounts in the Index. In calculating the initial ''equal dollar-weighting'' of component stocks, the Amex, using closing prices on December 16, 1994, calculated the number of shares that would represent an investment of $300,000 in each of the stocks contained in the Index (to the nearest whole share). The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the assigned number of shares of each of the stocks in the Index divided by the current Index divisor. The Index divisor was initially calculated to yield a benchmark value of 200.00 at the close of trading on December 16, 1994. Annually thereafter, following the close of trading on the third Friday of December, the Index portfolio will be adjusted by changing the number of shares of each component stock so that each company is again represented in ''equal'' dollar

[5] Amendment No. 2 was subsequently superseded by Amendment No. 3. *See* Amendment No. 3, *infra* note 6.

[6] In Amendment No. 3, the Amex provided that: (1) the Exchange will replace component securities in the Index that, at the time of any quarterly review, have failed to maintain a share price of $5.00 or greater for a majority of business days during the three months prior to such quarterly review; and (2) the Exchange will publicly disseminate each Replacement List as soon as practicable following receipt from Morgan Stanley. In Amendment No. 3 the Exchange also clarified that options on the Index will be listed on the March cycle. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated September 6, 1995 (''Amendment No. 3'').

[7] In Amendment No. 4, the Amex provided that: (1) the Exchange will in its initial Information Circular describing the trading of options on the High Tech 35 Index advise its membership that a list of securities from which the Exchange will choose replacements for the Index will be publicly available each quarter for their review, and that the Exchange will issue an Information Circular each quarter setting forth the updated replacement list; and (2) each security included on the replacement list will meet the initial criteria for components in the Index and each security chosen from that list as a replacement will continue to meet those criteria at the time of its inclusion in the Index. *See* letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated September 19, 1995 (''Amendment No. 4'').

[8] Amex Rule 902C(d) provides, among other things, that Morgan Stanley does not guarantee the accuracy or completeness of the Tech 35 Index or any data included therein, nor does Morgan Stanley make any warranty, either express or implied, as to the results to be obtained by any person or entity from the use of the Tech 35 Index or any data included therein.

[9] The current components of the Index are: Apple Computer, Inc.; Autodesk, Inc.; Adobe Systems Incorporated; Applied Materials, Inc.; America Online, Inc.; Automatic Data Processing, Inc.; Bay Networks, Inc.; Broderbund Software, Inc.; Computer Associates International Inc.; 3Com Corporation; Compaq Computer Corporation; Cabletron Systems, Inc.; Computer Sciences Corporation; Cisco Systems, Inc.; EMC Corporation; Electronic Arts Inc.; First Data Corporation; General Motors (Class E); Hewlett-Packard Company; IBM; Intel Corporation; Intuit Inc.; KLA Instruments Corporation; Linear Technology Corporation; Motorola, Inc.; Microsoft Corporation; Novell, Inc.; Oracle Systems Corporation; Parametric Technology Corporation; Seagate Technology, Inc.; Silicon Graphics, Inc.; Synopsys, Inc.; Tellabs Inc.; Texas Instruments, Incorporated; and Xilinx, Inc.

[10] T3See infra Section II.D entitled ''Calculation of the Index'' for a description of this calculation method.

[11] The Amex's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* Amex Rule 915. As of June 15, 1995, all of the Index component securities had standardized options trading on them.

amounts.[12] If necessary, a divisor adjustment is made to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the annual adjustment.

Subject to the maintenance criteria discussed below, the number of shares of each component stock in the Index will remain fixed between annual reviews except in the event of certain types of corporate actions, such as the payment of a dividend (other than an ordinary cash dividend), stock distributions, stock splits, reverse stock splits, rights offerings, distributions, reorganizations, recapitalizations, or similar event with respect to an Index component stock. In a merger or consolidation of an issuer of a component security, if the security remains in the Index, the number of shares of that security will be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[13] In the event of a stock replacement, the average dollar value of the remaining Index components will be calculated and that amount invested in the replacement stock, rounded to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B and to the Options Price Reporting Authority (''OPRA'').

*E. Maintenance of the Index*

The Tech 35 Index will be calculated and maintained by the Amex in consultation with Morgan Stanley which may, from time to time, suggest changes in the technology industry categories represented in the Index or changes in the number of component stocks in an industry category to reflect the changing conditions in the technology sector. In addition to the annual rebalancings of the Index discussed above, the Amex will maintain the Index so that if at any time between annual rebalancing the top five component securities, by weight, account for more than one-third of the weight of the Index, the Index will be rebalanced after the close of trading on the third Friday (''Expiration Friday'') in the next month in the March cycle.[14]

The Amex will also review the Index securities on a quarterly basis and will replace component securities that fail to meet the following maintenance criteria: [15] (1) a minimum market capitalization of $75 million; (2) average monthly trading volume in the component security of at least 500,000 shares during the preceding six month period; (3) a share price greater than $5.00 for a majority of the trading days during the preceding three month period; [16] and (4) at least 90% of the Index components, by weight, must satisfy the Exchange's options eligibility requirements in Rule 915. In addition, the Exchange expects to maintain the Index with 35 components, however, in the event that the Exchange determines to increase the number of components in the Index to more than 46 or decrease the number of components to less than 24, the Exchange must obtain prior approval from the Commission pursuant to Section 19(b) of the Act.[17]

At the beginning of each calendar quarter, Morgan Stanley will provide the Amex with a current list of 45 replacement stocks from which to draw in the event that a component in the Index must be replaced due to merger, takeover, failure to satisfy the above maintenance criteria, or other similar event (each a ''Replacement List''). The Amex will be required to hold each Replacement List for a three month ''seasoning period'' before that Replacement List can be used by the Amex for selecting replacement securities for the Index.[18] The Amex will publicly distribute the Replacement Lists as soon as practicable following receipt from Morgan Stanley.[19] In addition to the requirements discussed above for initial inclusion in the Index, a security must have a share price of at least $7.50 at the time it is added to a Replacement List.[20] Moreover, a security selected from a Replacement List to be added to the Index must also have a share price of at least $7.50, as well as meet the other criteria for inclusion in the Index, at the time it is publicly announced as a replacement.[21]

The stocks on each Replacement List will be selected and ranked by Morgan Stanley based on a number of criteria, including conformity to Exchange Rules 915 and 916, which set forth the criteria for the initial and continued listing of standardized options on equity securities, trading liquidity, market capitalization, ability to borrow shares, and share price. The replacement stocks will be categorized by Morgan Stanley by industry within the technology sector and ranked within their category based on the aforementioned criteria. The replacement stock for a security being removed from the Index will be selected solely by the Amex from the most recent ''seasoned'' Replacement List based on industry category and liquidity.[22]

In addition, Morgan Stanley will advise the Exchange regarding the handling of unusual corporate actions which may arise from time to time. Routine corporate actions (*e.g.*, stock splits, routine spinoffs, etc.) which require straightforward index divisor adjustments will be handled by the Exchange's staff without consultation with Morgan Stanley. All stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spin-offs, or extraordinary dividends will be made by Exchange staff in consultation with Morgan Stanley, although Amex ultimately will select the actual replacement stock from the Replacement List without Morgan Stanley's assistance. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever practicable. As with all options currently trading on the Amex, the Exchange will make this information available to the public through the dissemination of information circulars.

*F. Expiration and Settlement*

The Index value for purposes of settling outstanding Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of National Market securities traded through Nasdaq, the first reported sale

[12] In certain circumstances, the Index will be rebalanced prior to the end of a calendar year. *See infra* Section II.E. (Maintenance of the Index).

[13] *See* Amendment No. 1, *supra* note 4.

[14] *See* Amendment No. 1, *supra* note 4.

[15] *Id.*

[16] *See* Amendment No. 3. *supra* note 6.

[17] *See* Amendment No. 1, *supra* note 4. The Commission notes that in the event that the number of components in the Index is changed to any number other than 35, the Amex must contact the Commission to determine whether a rule filing pursuant to Section 19(b) of the Act will be required to change the name of the Index.

[18] *See* Letter from Robin Roger, Vice President and Counsel, Morgan Stanley, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated September 18, 1995 (''Morgan Stanley Letter'').

[19] *See* Amendment No. 3, *supra* note 6.

[20] *See* Amendment No. 1, *supra* note 4.

[21] *Id. See Also* Amendment No. 4, *supra* note 7.

[22] The Amex will ensure that at the time of selection it will only select securities that continue to meet the eligibility requirements discussed above. *See* Amendment No. 4, *supra* note 7.

price will be used. Once all of the component stocks have opened for trading, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for purposes of determining the settlement value of the Index, the Amex will wait until the end of the trading day on expiration Friday.[23]

*G. Contract Specifications*

The proposed options on the Index will be cash-settled, European-style options.[24] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The options on the Index will expire on the Saturday following the third Friday of the expiration month. Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals in the March cycle.[25] The Exchange also intends to list Index LEAPS having up to thirty-six months to expiration. Pursuant to the Amex's rules, strike price interval, bid/ask differential and price continuity rules will not apply to the trading of Index LEAPS until their time to expiration is less than twelve months.

The options on the Index will expire on the Saturday following Expiration Friday. Because options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

*H. Listing of Long-Term Options on the Full Value or Reduced Value Broker/Dealer Index*

The proposal provides that the Exchange may list long-term index options that expire from 12 to 36 months from listing on the full-value Tech 35 Index or a reduced-value Index that will be computed at one-tenth the value of the full-value Index. The current and closing Index value for reduced-value Tech 35 LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. The reduced-value Index LEAPS will also have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

In addition, the Amex's rules provide that full-value or reduced-value Index LEAPS will be issued at no less than six month intervals and that new strike prices will either be near or bracketing the current Index value.

*I. Position and Exercise Limits, Margin Requirements, and Trading Halts*

Because the Index is a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), the proposal provides that Exchange rules that are applicable to the trading of narrow-based index options will apply to the trading of options on the Index. Specifically, Exchange rules governing margin requirements,[26] position and exercise limits,[27] and trading halt procedures[28] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that positions in full and reduced-value Index LEAPS will be aggregated with positions in regular Index options. For aggregation purposes, ten reduced-value contracts will equal one full-value contract.

*J. Surveillance*

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options and full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group (''ISG'') Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[29]

Morgan Stanley has also adopted special procedures to prevent the potential misuse of material, non-public information by the research, sales and trading divisions of the firm in connection with the maintenance of the Index.[30] As discussed above, the stocks on each Replacement List are not eligible to be added to the Index by the Amex for a period of three months after receipt of the Replacement List by the Exchange. Moreover, the Amex has agreed to publicly disseminate each Replacement List by issuing information circulars so that investors will know in advance which securities will be considered as replacements for the Index.[31]

In addition, Morgan Stanley will have a limited role in the stock replacement selection and substitution process. First, when a stock in the Index no longer meets the published criteria as determined following a quarterly review of the components by the Exchange, the Amex will determine, without consultation with Morgan Stanley, which security from the applicable Replacement List will be selected for addition to the Index. Second, the Amex will also make adjustments as a result of stock splits, spin-offs, and otherwise, without consultation with Morgan Stanley. Finally, even in those situations where the Amex consults

[23] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the Amex will use the closing value of that stock in its primary market on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[24] A European-style option can be exercised only during a specified period before the option expires.

[25] *See* Amendment No. 3, *supra* note 6. With respect to Amex Rule 903C(b), the Exchange proposes to list near-the-money option series on the Index at 2½ point strike price intervals when the value of the Index is below 200.

[26] Pursuant to Amex Rule 462(d)(2)(D)(iv), the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[27] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to Rules 904C and 905C, that a lower limit is warranted.

[28] Pursuant to Amex Rule 918C, the trading of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[29] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock; and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[30] *See* Morgan Stanley Letter, *supra* note 18.

[31] *See* Amendment No. 3, *supra*, note 6.

with Morgan Stanley, upon the occurrence of certain events, the actual replacement stock will be selected solely by Amex from the 45 stocks on the replacement list.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[32] Specifically, the Commission finds that the trading of Tech 35 Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the various high technology industries.[33]

The trading of options on the Tech 35 Index and on a reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these issues.

*A. Index Design and Structure*

The Commission believes it is appropriate for the Exchange to designate the Index as a narrow-based index for purposes of index options trading. The Index is comprised of a limited number (35) of stocks intended to track a limited range of the technology sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.[34]

The Commission also believes that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded, with a mean and median average monthly trading volume for the period between December 1, 1994, and May 31, 1995, of 24.1 million and 14.4 million shares, respectively. Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $54.0 billion to a low of $1.1 billion as of June 15, 1995, with the mean and median being $11.0 billion and $5.2 billion, respectively. Third, because the index is equal dollar-weighted, no one particular stock or group of stocks dominates the Index. Specifically, as of July 15, 1995, no one stock accounted for more than 3.98% of the Index's total value and the percentage weighting of the five highest weighted stocks in the Index accounted for 18.25% of the Index's value. Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above, at each quarterly review and rebalancing (annual or otherwise), at least 90% of the weight of the Index will be composed of securities eligible for standardized options trading.[35] Currently, all of the component stocks in the Index have standardized options trading on them. Fifth, Morgan Stanley and the Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3–1 of the Act. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help deter as well as detect any illegal activity.

In addition, even though the Index is only scheduled to be rebalanced annually, the Commission believes that the Amex and Morgan Stanley have developed several composition and maintenance criteria for the Index that will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, if at any time during the year the top five components in the Index, by weight, account for more than one-third of the weight of the Index, the Exchange will rebalance the Index following the close of trading on Expiration Friday in the next month in the March cycle. These rebalancing requirements will serve to ensure that any ''overweight'' stock[36] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted in the Index.

Second, after each quarterly review and each rebalancing (annual or otherwise), at least 90% of the weight of the Index will be comprised of stocks that are eligible for standardized options trading. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be easily manipulated by abusive trading in the smaller stocks contained in the Index.

Third, at each quarterly review of the Index, a component may only remain in the Index if it satisfies the maintenance requirements discussed above.[37] These requirements are similar to the continued listing requirements for options on individual equity securities.[38]

Fourth, because the Index is narrow-based, the applicable position and exercise limits (currently 10,500) and margin requirements will further reduce the susceptibility of the Index to manipulation. Lastly, Morgan Stanley will only add stocks to a Replacement List that are representative of the high technology sector and, as discussed above,[39] satisfy the inclusion criteria.

The Commission notes that certain concerns are raised when a broker-dealer, such as Morgan Stanley, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that the Amex has adequately addressed this concern with respect to options on the Index.

First, the value of the Index is to be calculated and disseminated by the Amex so that unless a party independently calculates the Index value, neither Morgan Stanley nor any other party will be in receipt of the values prior to the public dissemination of the Index value. Second, routine corporate actions (*e.g.*, stock splits, routine spinoffs, etc.) will be handled by the Amex without consultation with Morgan Stanley. Third, although stock

[32] 15 U.S.C. 78f(b)(5) (1988).

[33] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instruments is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the high technology sector in the U.S. stock markets.

[34] *See supra* Section II.I (Position and Exercise Limits, Margin Requirements, and Trading Halts).

[35] *See* Amendment No. 1, *supra* note 4.

[36] A stock would be ''overweight'' if its weight in the Index were greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular quarter and prior to the rebalancing.

[37] *See supra* Section II.E (Maintenance of the Index).

[38] *See* Amex Rule 916.

[39] *See supra* Section II.C (Eligibility Standards for the Inclusion of Component Stocks in the Index).

replacements and unusual divisor adjustments caused by the occurrence of extraordinary events, such as dissolution, merger, bankruptcy, non-routine spinoffs, or extraordinary dividends, will be made by Exchange staff in consultation with Morgan Stanley, Amex alone ultimately will select the actual replacement stock from the Replacement List without Morgan Stanley's assistance. Such replacements will be announced publicly at least 10 business days in advance of the effective change by the Amex through the dissemination of an information circular, whenever practicable. Fourth, each Replacement List submitted to the Amex by Morgan Stanley will be published by the Amex and securities cannot be selected from a Replacement List for three months after receipt by the Amex. Fifth, the Commission believes that the procedures Morgan Stanley has established to detect and prevent material non-public information concerning the Index from being improperly used by the person or persons responsible for compiling the Replacement Lists, as well as other persons within Morgan Stanley, as discussed above,[40] adequately serve to minimize the susceptibility to manipulation of the Index, the securities in the Index, and securities added to and deleted from any Replacement List. Finally the Exchange's existing surveillance procedures for stock index options will apply to the options on the Index and should provide the Amex with adequate information to detect and deter trading abuses that may occur. In summary, the Commission believes that the procedures outlined above help to ensure that Morgan Stanley will not have any informational advantages concerning modifications to the composition of the Index due to its limited role in consulting with Amex on the maintenance of the Index under certain circumstances.

*B. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options (including full-value and reduced-value LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Tech 35 Index options and full-value or reduced value Index LEAPS. Finally, the Amex has stated that it will distribute information circulars to members following rebalancings and prior to component changes to notify members of changes in the composition of the Index. Additionally, the Amex will publicly disseminate each Replacement List by means of information circulars. The Commission believes this should help to protect investors and avoid investor confusion.

*C. Surveillance*

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[41] In this regard, the Amex, NYSE, and National Association of Securities Dealers, Inc. are all members of the ISG, which provides for the exchange of all necessary surveillance information.[42]

*D. Market Impact*

The Commission believes that the listing and trading of Index options, including full-value and reduced-value Index LEAPS on the Amex will not adversely impact the underlying securities markets.[43] First, as described above, due to the ''equal dollar-weighting'' method, no one stock or group of stocks dominates the Index. Second, because at each quarterly review and each rebalancing of the Index, at least 90% of the weight of the Index must be accounted for by stocks that meet the Amex's options listing standards, the component stocks generally will be actively-traded, highly-capitalized stocks. Third, the currently applicable 10,500 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Tech 35 Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on he Index.[44]

The Commission finds good cause for approving Amendment Nos. 1, 3,[45] and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, as discussed above, the Commission believes that Amendment Nos. 1, 3, and 4 serve to minimize the susceptibility of the Index to manipulation by, among other things, requiring more restrictive maintenance standards than those originally proposed by the Exchange, and, in certain circumstances, requiring rebalancing of the Index more frequently than on an annual basis. Additionally, the Amex's original proposal was published in the Federal Register for the full 21-day comment period without any comments being received by the Commission. Finally, the Commission notes that except for the proposed rebalancing requirements, the proposal, as amended, satisfies the Exchange's generic narrow-based index option listing standards contained in Amex Rule 901C, Commentary .02. As

[40] *See* Morgan Stanley Letter, *supra* note 18.

[41] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45829 (October 5, 1992).

[42] *See supra* note 29.

[43] In addition, the Amex has represented that the Amex and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. *See* Letter from Charles Faurot, Managing Director, Market Data Services, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated August 10, 1995; Letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated August 15, 1995; and Letter from Joe Corrigan, Executive Director, OPRA, to Michael Walinskas, Branch Chief, OMS, DIvision, Comission, dated August 14, 1995.

[44] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[45] As noted above, Amendment No. 2 has been superseded by Amendment No. 3. *See supra* note 5.

discussed above, the Commission believes that the Exchange's proposed rebalancing requirements are adequate to ensure that any overweight components are brought back into line with the other components in the Index. As a result, the Commission believes that accelerating approval of Amendment Nos. 1, 3, and 4 will allow the Exchange to begin listing options on the Index (including Index LEAPS) without further delay in order to provide an additional exchange-traded hedging vehicle for investors with risk exposure to securities in the various technology industries.

Based on the above, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act and that good cause exists to approve Amendment Nos. 1, 3, and 4 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 3, and 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–26 and should be submitted by October 24, 1995.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–Amex–95–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 95–24536 Filed 10–2–95; 8:45 am]

BILLING CODE 8010–01–M

[46] 15 U.S.C. 78s(b)(2) (1988).

[47] 17 CFR 200.30–3(a)(12) (1994).

## DEPARTMENT OF STATE

### Advisory Committee on Voluntary Foreign Aid (ACVFA); Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* October 11, 1995 (8:30 a.m. to 5 p.m.).

*Location:* State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purposes of the meeting are: To be briefed on, and provide nongovernmental input regarding the implications of the UN Fourth World Conference on Women for U.S. foreign assistance.

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY OCTOBER 6, 1995, THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must call Lisa Douglas-Watson (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: September 14, 1995.

John Grant,

*Office Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.*

[FR Doc. 95–24482 Filed 10–2–95; 8:45 am]

BILLING CODE 6116–01–M

## THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

### National Advisory Board Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for the final meeting of the National Advisory Board. The meeting is open to the public.

**DATES:** The National Advisory Board meeting is scheduled for Wednesday, October 18, 1995, 9 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda

A detailed agenda will be available at the meeting. The meeting will include a discussion of the Board's final report entitled ''The Role of Citizen Advisory Boards in the Federal Governments Resolution of the S&L Crisis'' and, in recognition of the dedicated public service of the volunteer citizen national and six regional advisory boards and its accomplishments. In addition, there will be remarks by the executives of the RTC, the Executive Director of the Thrift Depositor Protection Oversight Board and the chair of the National Advisory Board.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: September 28, 1995.

Jill Nevius,

*Committee Management Officer.*

[FR Doc. 95–24543 Filed 10–2–95; 8:45 am]

BILLING CODE 2221–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–95–36]**

### Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's

regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 23, 1995.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:**

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 27, 1995.

Donald P. Byrne,

*Assistant Chief Counsel for Regulations.*

Petitions for Exemption

*Docket No.:* 28314.

*Petitioner:* Office of Aviation Systems Standards, FAA.

*Sections of the FAR Affected:* 14 CFR 135.165(b)(6) and (7).

*Description of Relief Sought:* To allow the Office of Aviation Systems Standards to continue to operate its BAe–125–800 flight inspection aircraft in long-range extended overwater operations, or over land where high-frequency (HF) communication is required, with one HF transmitter and receiver.

[FR Doc. 95–24551 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–13–M**

## Capacity Council Industry Outreach Meeting

Pursuant of Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. APP.I), notice is hereby given of a meeting of the Capacity Council Industry Outreach. The meeting will take place on Monday, October 16, 1995, at 1 p.m. in Conference Room 600E, 6th Floor, Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC.

The agenda for the meeting will include a briefing and discussion of System Performance Measures, Regional Planning Efforts, and a Report on Capacity Council Activities.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access to the building to attend the meeting should contact Ms. Paula Lewis, Office of System Capacity and Requirements, FAA/ASC–10, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7378.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 26, 1995.

Cynthia D. Rich,

*Associate Administrator for Airports.*

[FR Doc. 95–24550 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–13–M**

## Research and Special Programs Administration

## International Standards on the Transport of Dangerous Goods by Air; Public Meeting

**AGENCY:** Reseach and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the fifteenth session of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held in Montreal, Canada on October 17–27, 1995.

**DATE:** October 11, 1995 at 9:30 a.m.

**ADDRESS:** Department of Transportation, Nassif Building, Room 4436–4438, 400 Seventh Street SW., Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Frits Wybenga, (202) 366–0656, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** This meeting will be held in preparation for the fourteenth session of the ICAO Dangerous Goods Panel Working Group. The primary purpose of the Panel meeting will be to discuss proposed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions). The Panel will consider possible amendments to resolve problems encountered with the use of the Technical Instructions, and amendments to the Technical Instructions on the basis of revisions to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations).

The public is invited to attend without prior notification.

Documents

Documents submitted to the ICAO Dangerous Goods Panel may be reviewed between the hours of 8:30 and 5:00 in RSPA's Dockets Unit located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Copies of documents may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be obtained by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (782–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council (HMAC), Suite 250, 1101 Vermont Ave., Suite 301, NW., Washington, DC 20005; telephone number (202) 289–4550.

Issued in Washington, DC, on September 28, 1995.

Robert A. McGuire,

*Deputy Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 95–24540 Filed 10–2–95; 8:45 am]

**BILLING CODE 4910–60–M**

# Sunshine Act Meetings

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 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).

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Tuesday, October 10, 1995.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 29, 1995.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 95–24704 Filed 9–29–95; 3:27 pm]

BILLING CODE 6210–01–P

## FEDERAL HOUSING FINANCE BOARD

**TIME AND DATES:** 9:00 a.m., Thursday, October, 5, 1995.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**STATUS:** This entire meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

- Consideration of FHLBank of San Francisco's AHP Priority
- FHLBank of Dallas/Mercantile Bank AHP Modification
- FHLBank System Compensation Issues
  (A) Adoption of Proposed FHLBank System Compensation Regulation
  (B) Finance Board Approval of 1996 Base Salary Ranges and Merit Increases Guidelines
- Proposed Rule on FHLBank Membership Approval

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

*Managing Director.*

[FR Doc. 95–24694 Filed 9–29–95; 3:24 pm]

BILLING CODE 6725–01–P

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Friday, October 6, 1995.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

Matters To Be Considered:

Bunk Beds

The staff will brief the Commission on the status of the voluntary standards for bunk beds.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: September 29, 1995.

Sadye E. Dunn,

*Secretary.*

[FR Doc. 95–24695 Filed 9–29–95; 3:25 pm]

BILLING CODE 6355–01–M

## SUNSHINE ACT NOTICES

**AGENCY:** Federal Election Commission

**"FEDERAL REGISTER" NUMBER:** 95–24315.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Tuesday, October 3, 1995, at 10:00 a.m.; meeting closed to the public.

This meeting has been changed to 4:00 p.m.

**DATE AND TIME:** Tuesday, October 3, 1995 at 10:00 a.m.

**PLACE:** 999 E. Street, N.W. Washington, D.C. (Ninth Floor.)

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

**REGULATIONS:**

Revised *MCFL* Regulations on Facilitation, Candidate Appearances, Endorsements, Voter Guides and Meeting Rooms.

*MCFL* Regulations: Defining Restricted Class; Logos and Letterhead; Registration & Voting Information and Communications; GOTV Drives.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

*Secretary of the Commission.*

[FR DOC. 95–24699 Filed 9–29–95; 3:26 pm]

BILLING CODE 6715–01–M

## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of October 2, 9, 16, and 23, 1995.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**MATTERS TO BE CONSIDERED:**

Week of October 2

*Tuesday, October 3*

10:00 a.m.
Briefing by National Academy of Sciences (NAS) on Recommendations for Technical Bases of Yucca Mountain Standards (Public Meeting)
(Contact: Lisa Clendening, 202–334–3066)

Week of October 9—Tentative

*Tuesday, October 10*

10:00 a.m.
Briefing on NRC's Technical Training Program (Public Meeting)
(Contact: Ken Raglin, 615–855–6500)

Week of October 16—Tentative

There are no meetings scheduled for the Week of October 16.

Week of October 23—Tentative

There are no meetings scheduled for the Week of October 23.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as through the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: September 29, 1995.

William M. Hill, Jr.,

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 95–24692 Filed 9–29–95; 2:18 pm]

**BILLING CODE 7590–01–M**

# Corrections

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Notice of Proposal to Submit Information Collection to the Office of Management and Budget (OMB)

*Correction*

In notice document 95–23524 beginning on page 49249 in the issue of Friday, September 22, 1995, make the following correction:

On the same page, in the second column, in the first paragraph under the heading **DATES**, in the second line, ''(insert 60 days after publication date).'' should read ''November 21, 1995.''

**BILLING CODE 1505–01–D**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570-808]**

### Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Administrative Review

*Correction*

In notice document 95–23334 beginning on page 48687 in the issue of Wednesday, September 20, 1995, in the first column, under **EFFECTIVE DATE**, ''October 20, 1995.'' should read ''September 20, 1995.''.

**BILLING CODE 1505–01–D**

federal register

Tuesday
October 3, 1995

# Part II

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner

## Congregate Housing Services Program: Cancellation of Notice of Funding Availability for the Department of Housing and Urban Development's Competition; Fiscal Year 1995; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

**[Docket No. FR–3839–N–02]**

### Congregate Housing Services Program: Cancellation of Notice of Funding Availability for the Department of Housing and Urban Development's Competition; Fiscal Year 1995

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of Cancellation of the Notice of Funding Availability (NOFA) for HUD's competition for the Congregate Housing Services Program (CHSP), Fiscal Year (FY) 1995.

**SUMMARY:** On May 10, 1995, at 60 FR 25092, HUD issued a NOFA of $38,480,150 for FY 1995 for the CHSP.

On July 27, 1995, the President approved the ''Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995'' (Pub. L. 104–19, 109 Stat. 194) (the Rescissions Act). The Rescissions Act rescinded $37 million from the CHSP—approximately $23 million of the funds appropriated in FY 1995 and approximately $14 million in unobligated funds for prior years.

After rescission, HUD has approximately $1.8 million available to fund CHSP grants. HUD received 33 applications for CHSP grants, but HUD has decided not to fund any additional CHSP grants for FY 1995 because of the limited amount of funds available. Instead, HUD has decided to use the $1.8 million to fund further the 52 CHSP grantees already funded under the Congregate Services Act of 1978 (42 U.S.C. 8001) for an additional four and one-half (4½) months each.[1] Under the Department of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1995 (Pub.L. 103–327), HUD is authorized to use up to $6,267,000 for entities operating the CHSP in accordance with the 1978 Act, as amended. Prior to the rescission of CHSP funds, HUD made $142,592 in FY 1995 funds available for the 1978 Act grantees.

Therefore, HUD is cancelling the FY 1995 CHSP NOFA with respect to the funds allocated for HUD's competition. Applications received by RHCDS will continue to be processed in accordance with the May 10, 1995 NOFA.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this NOFA cancellation, applicants with HUD projects may contact the appropriate Asset Management, Public and/or Indian Housing Management Specialist in the HUD State/Area office which has jurisdiction for the projects.

Applicants for HUD projects should not contact HUD Headquarters; such calls will be referred to the appropriate HUD State/Area office.

Accordingly, HUD's competition for the Congregate Housing Services Program that was offered under the NOFA published on May 10, 1995, at 60 FR 25092, is cancelled.

Dated: September 7, 1995.

Nicolas P. Retsinas,

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 95–24468 Filed 10–2–95; 8:45 am]

BILLING CODE 4210–27–P

[1] Based upon the experience of grantees funded under the 1978 Act, Congress created a revised CHSP under the National Affordable Housing Act (Pub.L. 101–625) (NAHA), to be administrated in coordination with the RHCDS. Under NAHA, eligible housing projects that were receiving assistance under the 1978 Act were to continue to receive priority for assistance.

federal register

Tuesday
October 3, 1995

# Part III

# Department of Housing and Urban Development

## Office of the Secretary

## Regulatory Waiver Requests Granted; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. FR–3864–N–04]**

### Notice of Regulatory Waiver Requests Granted

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Public notice of the granting of regulatory waivers. Request: April 1, 1995 through June 30, 1995.

**SUMMARY:** Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the eighteenth such notice being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

**FOR FURTHER INFORMATION CONTACT:** For general information about this Notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–3055; TDD: (202) 708–3259. (These are not toll-free numbers.) For information concerning a particular waiver action, about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

**SUPPLEMENTARY INFORMATION:** As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3)) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the eighteenth Notice of its kind to be published under Section 106. It updates HUD's waiver-grant activity from April 1, 1995 through June 30, 1995. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from July 1, 1995 through September 30, 1995.

For ease of reference, waiver requests granted by departmental officials authorized to granted waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in Part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR Chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between July 1, 1995 through September 30, 1995.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: September 26, 1995.

Henry G. Cisneros,

*Secretary.*

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, April 1, 1995 Through June 30, 1995

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Mr. James B. Mitchell, Director, Financial Services Division, U.S. Department of Housing and Urban Development, 470 L' Enfant Plaza East, Suite 3119, Washington, DC 20024, Phone: (202) 755–7450 x125.

1. REGULATION: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

PROJECT/ACTIVITY: Miami Beach HA refunding of bonds issued in 1978, which financed an uninsured Section 8 assisted project: Rebecca Towers North, HUD Project Number FL29–0009–001.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-FHA Commissioner.

DATE GRANTED: April 17, 1995.

REASONS WAIVED: The Part 811 regulations cited above prohibited refundings and required that excess reserve balances be used for project purposes. The issuer has requested HUD's permission to release excess reserve balances from the 1978 Trust Indenture for use in providing newly constructed housing for abused women and children. Issuance of 1995 refunding bonds under Section 103 of the Tax Code will not reduce project debt service nor generate Section 8 savings. The Housing Authority will agree to extend low-income occupancy in this project for 10 years after expiration of the Housing Assistance Payments Contract in January 2019.

2. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The New Castle, Indiana Housing Authority refunding of bonds which financed a Section 8 assisted project, Willow Glen Apartments, FHA No. 073–35349.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: April 14, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 14, 1995. Refunding bonds have been priced to an average yield of 6.42%. The tax-exempt refunding bond issue of $1,275,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.23% to 6.7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

3. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Hilliard HDC of Columbus, Ohio refunding of bonds which financed a Section 8 assisted project, the Sturbridge Green Apartments (FHA No. 043–35260).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: April 25, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 16, 1995. Refunding bonds have been priced to an average yield of 6.35%. The tax-exempt refunding bond issue of $1,435,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date with tax-exempt bonds yielding 6.35%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.7% to 6.65%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

4. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Ohio Capital Corporation for Housing refunding of bonds which financed three Section 8 assisted projects, Miamisburg Manor, Mountaingate, and Applewood Village Apartments (FHA Nos. 046–35520, 046–35533, and 043–35246).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 4, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 21, 1995. Refunding bonds have been priced to an average yield of 6.28%. The tax-exempt refunding bond issue of $3,935,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 8.5%—9.5% at the call date with tax-exempt bonds yielding 6.28%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 9.25% and 8.5% to 6.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

5. REGULATION: 24 CFR 811.114(d), 811.115(b), 811.117.

PROJECT/ACTIVITY: The Housing Finance Corporation of Long Branch, New Jersey refunding of bonds which financed a Section 8 assisted uninsured project, Ocean View Towers, HUD No. NJ39–0014–052.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 11, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on July 22, 1994. Refunding bonds have been priced to an average yield of 6.32%. The tax-exempt refunding bond issue of $5,445,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 7.75% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

6. REGULATION: 24 CFR 811.106(d) and 811.107(d) of 1977 Regulations.

PROJECT/ACTIVITY: Greenville (North Carolina) HA refunding of bonds which financed an uninsured Section 8 assisted project: University Towers Elderly Apartments, HUD Project Number NC19–0004–005.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-FHA Commissioner.

DATE GRANTED: May 15, 1995.

REASONS WAIVED: The Part 811 regulations cited above prohibited refundings and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1979 Trust Indenture for use in providing affordable housing for low-income families. Issuance of 1995 refunding bonds under Section 103 of the Tax Code will reduce project debt service and generate Section 8 savings to be shared equally by the Issuer and the U.S. Treasury pursuant to the McKinney Act. The Housing Authority has agreed to extend low-income occupancy in this project for 10 years after expiration of the Housing Assistance Payments Contract.

7. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Ohio Capital Corporation for Housing refunding of bonds which financed three Section 8 assisted projects, Athens Gardens, Sprucewood Commons, and Woodwind Apartments (FHA Nos. 043–35266, 043–35254, and 046–35535).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

DATE GRANTED: May 17, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 29, 1995. Refunding bonds have been priced to an

average yield of 6.29%. The tax-exempt refunding bond issue of $4,625,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date with tax-exempt bonds yielding 6.29%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.72% to 6.62%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

8. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Ohio Capital Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Crescent Square Apartments, FHA No. 046–35559.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 16, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on March 29, 1995. Refunding bonds have been priced to an average yield of 6.59%. The tax-exempt refunding bond issue of $1,170,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5—12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6.62%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

9. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Boaz, Alabama Housing Authority refunding of bonds which financed a Section 8 assisted project, Meadowood Apartments, FHA No. 062–35346.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 18, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 1, 1995. Refunding bonds have been priced to an average yield of 6.60%. The tax-exempt refunding bond issue of $1,085,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.5% to 6.97%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

10. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Smithville, Texas Housing Authority refunding of bonds which financed a Section 8 assisted project, Smithville Gardens Apartments, FHA No. 115–35218.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 24, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 25, 1995. Refunding bonds have been priced to an average yield of 6.40%. The tax-exempt refunding bond issue of $1,110,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.3% to 6.40%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

11. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Port Arthur, Texas Housing Authority refunding of bonds which financed a Section 8 assisted project, Stonegate Village Apartments, FHA No. 114–35313.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 24, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 25, 1995. Refunding bonds have been priced to an average yield of 6.38%. The tax-exempt refunding bond issue of $1,250,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% to 12.25% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

12. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(b)(1), 811.108(b)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The County of Palm Beach, Florida refunding of bonds which financed a Section 8 assisted project, Boynton Terrace Apartments, Section 8 No. FL29–0053–049.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: May 26, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for

original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on May 12, 1995. Refunding bonds have been priced to an average yield of 8.0% as unrated due to the deficient condition of the project. The tax-exempt refunding bond issue of $4,375,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 13.35% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective. This refunding will provide $110,000 at closing for urgently needed project repairs and an additional $249,000 over time for other capital improvements.

13. REGULATION: 24 CFR 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Meadows (North Liberty, IN) HDC refunding of bonds which financed a Section 8 assisted project, Meadows Apartments, FHA No. 073–35420.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: June 15, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 21, 1994. Refunding bonds have been priced to an average yield of 6.55%. The tax-exempt refunding bond issue of $1,615,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will fund project repairs and substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

14. REGULATION: 24 CFR 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The St. Louis Area HFC refunding of bonds which financed a Section 8 assisted project, Kendelwood Apartments, FHA No. 085–35302.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: June 22, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 15, 1995. Refunding bonds have been priced to an average yield of 6.40%. The tax-exempt refunding bond issue of $4,055,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1996 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.6% to 7.2%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

15. REGULATION: 24 CFR 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Bossier City, Louisiana Housing Authority refunding of bonds which financed a Section 8 assisted project, Clover Dale Apartments, FHA No. 059–35195.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: June 22, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 9, 1995. Refunding bonds have been priced to an average yield of 6.55%. The tax-exempt refunding bond issue of $4,270,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9⅜% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.5% to 6.95%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

16. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Ohio Capital Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Bucyrus Estates Apartments, FHA No. 042–35326.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: June 23, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 8, 1995. Refunding bonds have been priced to an average yield of 6.43%. The tax-exempt refunding bond issue of $1,565,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.25% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

17. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Shreveport, Louisiana Housing Authority refunding of bonds which financed a Section 8 assisted project, Stone Vista Apartments, FHA No. 059–35196.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: June 27, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on May 12, 1995. Refunding bonds have been priced to an average yield of 5.94%. The tax-exempt refunding bond issue of $3,055,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.4% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.5% to 6.375%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

18. REGULATION: 24 CFR 811.107(a)(2), 811.107(b), 811.108(a), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

PROJECT/ACTIVITY: The Ohio Capital Corporation for Housing refunding of bonds which financed two Section 8 assisted projects, Harrisburg Station Project FHA No. 043–35267 and Murray Commons Project, FHA No. 043–35258.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

DATE GRANTED: June 29, 1995.

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 27, 1995. Refunding bonds have been priced to an average yield of 6.07%. The tax-exempt refunding bond issue of $3,350,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.72% to 6.4%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Note to Reader: The person to be contacted for additional information about these waiver-grant items in this listing is:

Debbie Ann Wills, Field Management Officer, U.S. Department of Housing & Urban Development, Office of Community Planning and Development, 451 7th Street, S.W., Washington, D.C. 20410–7000, Telephone: (202) 708–2565.

19. REGULATION: 24 CFR 92.2.

PROJECT/ACTIVITY: The City and County of Honolulu, Hawaii requested a waiver of the definition of commitment of HOME program funds to recognize, for one time only, the reservation of $1.2 million for the purchase of rental housing.

NATURE OF REQUIREMENT: The HOME regulation at 92.2 defines commitment as the jurisdiction having entered into a legally binding agreement with a recipient to use a specific amount of HOME funds to produce affordable housing.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: April 26, 1995.

REASONS WAIVED: The application of section 92.2 of the HOME regulations would create an undue hardship for the low income plantation workers who would have to vacate their housing and thus adversely effect the purposes of the Act.

20. REGULATION: 24 CFR 92.2.

PROJECT/ACTIVITY: The City Los Angeles, California requested a waiver of the HOME program regulation that requires a community development housing organization (CHDO) to have a tax exempt ruling from the IRS. The waiver was requested for a specific non-profit organization and it will allow the City to meet the requirement that 15 percent of its FY 1992 HOME funds be reserved for CHDOs within 24 months after being awarded.

NATURE OF REQUIREMENT: One of the HOME definitions at 92.2 defines of a community development housing organization (CHDO) as an organization that has a tax exempt ruling from the IRS.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: May 8, 1995.

REASONS WAIVED: It was determined that the application for tax exempt status was either not processed by the IRS or lost in transit. It was determined that there was good cause not to take away the HOME funds unless the organization did not receive tax exempt status by June of 1996.

21. REGULATION: 24 CFR 92.220(a)(6)(ii).

PROJECT/ACTIVITY: The State of Indiana Housing Finance Authority requested a waiver of the HOME program regulations at 24 CFR 92.220(a)(6)(ii) to allow as eligible forms of matching contribution certain project specific legal, architectural and engineering fees that are waived or foregone.

NATURE OF REQUIREMENT: The HOME regulation at 92.220 (a)(6) provides the basis for allowing project-specific legal, architectural and engineering labor costs that are waived or foregone to be counted as match. However, Section 92.220(a)(6)(ii) requires that the fees be the same as the single rate published annually in the Federal Register.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: April 8, 1995.

REASONS WAIVED: The application of section 92.220(a)(6)(ii) of the HOME regulations would create an undue hardship for the State by limiting its ability to participate in the HOME program.

22. REGULATION: 24 CFR 92.222(b).

PROJECT/ACTIVITY: The City of St. Louis, Missouri requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

NATURE OF REQUIREMENT: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal ''natural disaster areas'' are given relief from the match requirements for one year.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: May 8, 1995.

REASONS WAIVED: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

23. REGULATION: 24 CFR 92.252(a)(2)(i).

PROJECT/ACTIVITY: The State of Arizona, on behalf of a State HOME recipient Nogales Arizona, requested a waiver of the HOME program regulations at 24 CFR 92.252(a)(2)(i) to permit Section 202 project rents, which exceed the low HOME rents to prevail for the project.

NATURE OF REQUIREMENT: The regulations at 24 CFR 92.252(a)(2)(i) state, ''to obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12, and if applicable, subtracts a monthly allowance for any utilities and services to be paid by the tenant.''

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: May 8, 1995.

REASONS WAIVED: The application of section 92.252(a)(2)(i) of the HOME regulations for the section 202 project would create an undue hardship for the City because an elderly project would not be developed in the jurisdiction, and thus adversely affect the purposes of the Housing and Community Development Act.

24. REGULATION: 24 CFR 92.254(a)(4)(ii).

PROJECT/ACTIVITY: State of California, Napa County requested a waiver of 24 CFR 92.254(a)(4)(ii) which limits the value of homes purchased using HOME funds.

NATURE OF REQUIREMENT: The HOME regulations at 24 CFR 92.254(a)(4)(ii) state that for housing to qualify as affordable housing for homeownership, its purchase price and/or after rehabilitation value cannot exceed 95 percent of the median purchase price for single family housing for the jurisdiction as determined by HUD. If the jurisdiction believes the limits determined by HUD do not accurately reflect 95 percent of the median purchase price, the regulation provides that it may appeal the limits in accordance with 24 CFR 203.18(b).

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 29, 1995.

REASONS WAIVED: The HUD Field Office presented data for single family home sales that was determined by the Assistant Secretary to be a reasonable and accurate representation of local market conditions and, therefore, the HOME purchase price/value limits were revised upward for the Napa County.

25. REGULATION: 24 CFR 291.400.

PROJECT/ACTIVITY: The Anoka County Community Action Program requested a waiver the 24 month residency for a tenant in a single family property leased under the single family property disposition homeless program.

NATURE OF REQUIREMENT: The regulations at 24 CFR 291.400 prohibit a non-profit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 19, 1995.

REASONS WAIVED: The waiver will allow a formerly homeless family more time to find permanent housing.

26. REGULATION: 24 CFR 511.11(a).

PROJECT/ACTIVITY: The City of Pittsburg, Kansas requested a waiver of the Rental Rehabilitation requirement that the amount of disbursed funds for a cancelled project be returned to the grantee's C/MI system.

NATURE OF REQUIREMENT: The regulations at 24 CFR 511.11(a) state that, ''if a project is terminated before completion of rehabilitation whether, voluntarily by the grantee or otherwise, an amount equal to the Rental Rehabilitation grant amount already disbursed for the project shall be paid by the grantee to its C/MI account, whether or not the grantee has already expended the grant amount to pay for project costs''.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 20, 1995.

REASONS WAIVED: It was determined that undue hardship would have resulted from applying Section 511.11(a) requirements to the City of Pittsburg and adversely affect the purposes of the Rental Rehabilitation program.

27. REGULATION: 24 CFR 511.11(g)(1).

PROJECT/ACTIVITY: The City of Miami Beach, Florida requested a waiver of Rental Rehabilitation regulations at 24 CFR 511.11(g)(1) to allow the City to fund needed repairs at the Blackstone Apartments a 131-unit apartment building for the elderly.

NATURE OF REQUIREMENT: The Rental Rehabilitation regulations at 24 CFR 511.11(g)(1) prohibit the use of RRP funds for projects receiving assistance through programs authorized by the United States Housing Act of 1937, including Section 8 project-based assistance.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: April 7, 1995.

REASONS WAIVED: The waiver was granted because the requirement would have caused an undue hardship on the elderly residents of the Blackstone Apartments and adversely effected the purposes of the Housing and Community Development Act.

28. REGULATION: 24 CFR 570.200(h) & 570.200(a)(5).

PROJECT/ACTIVITY: The City Nashua, New Hampshire requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the local regional Community Action Program agency to complete the acquisition and rehabilitation of a property to serve as a Single Room Occupancy (SRO) facility for 40 formerly homeless women.

NATURE OF REQUIREMENT: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: April 7, 1995.

REASONS WAIVED: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the City and the agency to complete the acquisition and rehabilitation, by a non-profit organization, of a Section 8 Mod Rehab SRO facility.

29. REGULATION: 24 CFR 570.200(h) & 570.200 (a)(5).

PROJECT/ACTIVITY: The City Miami Beach, Florida requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City of Miami Beach to provide a financial contribution of $1,130,000 to the Loews/Forest City Ratner Section 108 project.

NATURE OF REQUIREMENT: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: April 13, 1995.

REASONS WAIVED: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the completion of the project which will result in the creation of 629 jobs a majority of which will benefit low and moderate income people.

30. REGULATION: 24 CFR 570.200(h) & 570.200(a)(5).

PROJECT/ACTIVITY: The City Nashua, New Hampshire requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City to provide a financial contribution for an acquisition activity.

NATURE OF REQUIREMENT: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 19, 1995.

REASONS WAIVED: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the city to fund the acquisition, by a non-profit organization, of a youth center to serve local youth and function as a community policing outpost, with FY 1996, FY 1997 and FY 1998 CDBG funds.

31. REGULATION: 24 CFR 570.200(h) & 570.200(a)(5).

PROJECT/ACTIVITY: The City of Springfield, Missouri requested a waiver of 24 CFR 570.200(h) regarding reimbursement of pre-agreement costs for two public service activities.

NATURE OF REQUIREMENT: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 21, 1995.

REASONS WAIVED: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the reimbursement of local funds, for the Springfield Community Center Summer Youth Program, and the Community School Pilot Project, with FY 1995 funds.

32. REGULATION: 24 CFR 570.200(h) & 570.200 (a)(5).

PROJECT/ACTIVITY: Wayne County, Michigan requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City of Trenton, Michigan to construct water and sewer lines in a low and moderate income area in one year in instead of over a three year period.

NATURE OF REQUIREMENT: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 29, 1995.

REASONS WAIVED: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the reimbursement of local funds, for water and sewer improvements to a low and moderate income area, with FY 1995 CDBG funds.

33. REGULATION: 24 CFR 572.135(c).

PROJECT/ACTIVITY: The Housing Authority of Pueblo, Colorado requested a waiver of the HOPE 3 program regulations at

24 CFR 572.135(c) to extend the time available for commitment of HOPE 3 sale and resale proceeds by 12 months.

NATURE OF REQUIREMENT: The regulations at 24 CFR 572.135(c) require that the HOPE 3 proceeds must be used for approved activities within one year of receipt.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: April 18, 1995.

REASONS WAIVED: The regulation was waived because it was determined there was good cause to allow the Housing Authority an extension of time to commit HOPE 3 sale and resale proceeds.

34. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: The State of New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The State requested a waiver of the expenditure limitation of ESG funds on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: May 8, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The State demonstrated that other eligible activities will be carried out with other funds.

35. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: Hennepin County, Minnesota requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The County requested a waiver of the expenditure limitation of ESG funds on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: May 8, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources; therefore, it was determined that the waiver was appropriate.

36. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: New York City, New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The City requested a waiver of the ESG expenditure limitation on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 15, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources; therefore, it was determined that the waiver was appropriate.

37. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: Oklahoma City, Oklahoma requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The City requested a waiver of the ESG expenditure limitation on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 19, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources; therefore, it was determined that the waiver was appropriate.

38. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: The City of Miami, Florida requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The City requested a waiver of the ESG expenditure limitation on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 19, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources; therefore, it was determined that the waiver was appropriate.

39. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: The City of Albany, New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The City requested a waiver of the ESG expenditure limitation on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 19, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources; therefore, it was determined that the waiver was appropriate.

40. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: Mt. Vernon City, New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The City requested a waiver of the ESG expenditure limitation on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 27, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

41. REGULATION: 24 CFR 576.21.

PROJECT/ACTIVITY: Morris County, New Jersey requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The County requested a waiver of the expenditure limitation of ESG funds on essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 29, 1995.

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

42. REGULATION: 24 CFR 582.100(b).

PROJECT/ACTIVITY: The Provincetown Housing Authority (PHA) requested a six month time extension to complete the rehabilitation of a building to be used for a Shelter Plus Care homeless facility.

NATURE OF REQUIREMENT: The Shelter Plus Care Final Rule at 24 CFR 582.100(b) requires that rehabilitation of a subject property be completed within twelve months of grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 29, 1995.

REASONS WAIVED: It was determined that there was good cause to grant the waiver to complete a Shelter Plus Care project.

43. REGULATION: 24 CFR 583.150(b).

PROJECT/ACTIVITY: The San Francisco Housing Authority requested a waiver to allow residents of a 73 unit Supportive Housing project to be assisted with Section 8 project-based certificates.

NATURE OF REQUIREMENT: The regulations at 24 CFR 583.150(b) state that HUD will not assist a facility with Transitional Housing funds if residents of the structure receive assistance under the United States Housing Act of 1937.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 7, 1995.

REASONS WAIVED: It was determined that the loss of 73 units and the accompanying supportive services for the homeless would result in a severe hardship for the targeted population, and therefore, the waiver was granted.

44. REGULATION: 24 CFR 882.408(d)(1)&(3).

PROJECT/ACTIVITY: New York City, New York requested a waiver of the Section 8 Moderate Rehabilitation regulations at 24 CFR 882.408(d)(1)&(3).

NATURE OF REQUIREMENT: The City requested a waiver of the Section 8 Moderate Rehabilitation regulations at § 882.408(d)(1) which limit changes in the initial contract rent and § 882.408(d)(3) which only allows the revised contract rent to exceed the FMR when it is determined ''in accordance with paragraph (d)(1)'' that it is necessary to exceed the FMR.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

DATE GRANTED: June 29, 1995.

REASONS WAIVED: The waiver was granted for good cause because the increased rent allowed the hiring of a 24-hour security for a SRO project for the mentally impaired in a high crime area.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: John Comerford, Director, Financial Management Division, Office of Assisted Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 708–1872.

45. REGULATION: 24 CFR 990.104.

PROJECT/ACTIVITY: Housing Authority of the City of Salem, OR. In determining the operating subsidy eligibility a request was made to exclude a source of income from the PFS calculation.

NATURE OF REQUIREMENT: The PFS regulation requires all sources of income to be reported when calculating the subsidy eligibility.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: February 27, 1995.

REASON WAIVED: In order to benefit the Resident Council rental fees for space on the roof of one of the highrise buildings of the HA will not be included in the PFS subsidy eligibility calculation and the Resident Council will be named the payee of the rental fee.

46. REGULATION: 24 CFR 990.108(e).

PROJECT/ACTIVITY: Housing Authority of the Township of Irvington. A request was made to prevent a loss of operating subsidy when converting 34 efficiency units to 17 one bedroom units.

NATURE OF REQUIREMENT: When unit months are lost through combining small units into larger units they must be removed from the calculation of unit months available in the PFS subsidy calculation.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: February 28, 1995.

REASON WAIVED: Because of problems the HA has experienced filling vacant efficiency units for the elderly the HA converted them to one bedroom units which it could rent to elderly couples. In order to support the HAs efforts to reduce vacancies, approval was granted for the HA to include the number of unit months which would be lost through this conversion in future PFS calculations.

47. REGULATION: 24 CFR 990.108(e).

PROJECT/ACTIVITY: Akron Metropolitan Housing Authority. A request was made to prevent a loss of operating subsidy when converting efficiency units to one bedroom units.

NATURE OF REQUIREMENT: When unit months are lost through combining small units into larger units they must be removed from the calculation of unit months available in the PFS subsidy calculation.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: February 28, 1995.

REASON WAIVED: Because of problems the HA has experienced filling vacant efficiency units for the elderly the HA converted them to one bedroom units which it could rent to elderly couples. In order to support the HAs efforts to reduce vacancies, approval was granted for the HA to include the number of unit months which would be lost through this conversion in future PFS calculations.

48. REGULATION: 24 CFR 990.109(b)(3)(iv).

PROJECT/ACTIVITY: Chicago Housing Authority. A request was made to use 85% for the HA's projected occupancy percentage when calculating its PFS operating subsidy eligibility.

NATURE OF REQUIREMENT: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: April 20, 1995.

REASON WAIVED: As acknowledged in the five-year Memorandum of Agreement (MOA) between HUD and the HA the key to achieving any of the vacancy reduction performance targets is the approval of the waiver. In order to be supportive of the MOA the HA was authorized to use 85% as the projected occupancy percentage with the limitation that 60% of the additional operating subsidy funds received be used on specific, identifiable actions to increase occupancy.

49. REGULATION: 24 CFR 990.118(d).

PROJECT/ACTIVITY: Buffalo, NY, Municipal Housing Authority. A request was made to consider the HAs Comprehensive Occupancy Plan terminated and to use Part VII of the Form HUD–52728–A to determine its occupancy percentage.

NATURE OF REQUIREMENT: The PFS regulation requires a PHA to use the Occupancy Percentage in its approved Comprehensive Occupancy Plan.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: April 28, 1995.

REASON WAIVED: Part VII of the Form HUD–52728–A allows the HA to reduce a 97% occupancy rate by the number of units that are in a funded, on-schedule modernization program. The HA believes that it would do better under these rules than under its COP which has become outdated, therefore the duration of the COP has been waived to allow the HA to use the newer rules.

50. REGULATION: 24 CFR 990.109(b)(3)(iv).

PROJECT/ACTIVITY: Kinsley, KS, Housing Authority. A request was made to use the HAs actual occupancy rate of 79% and recalculate its operating subsidy eligibility.

NATURE OF REQUIREMENT: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan to use a projected occupancy percentage of 97%.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: May 15, 1995.

REASON WAIVED: The HA was allowed to use its actual occupancy percentage to prevent undue hardships while it continues its efforts to reduce vacancies.

51. REGULATION: 24 CFR 990.109(3)(iv).

PROJECT/ACTIVITY: Housing Authority of the City of Lafayette, LA. A request was made to use the HAs actual occupancy rate of 87 percent for its 1995 fiscal year and 93 percent for its 1996 fiscal year.

NATURE OF REQUIREMENT: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan to use a projected occupancy percentage of 97%.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: July 13, 1995.

REASON WAIVED: The Department declared the HA in breach of the Annual Contributions Contract and took possession of all property and assets of the HA. In order to carry out plans to return the HA to local control a waiver was granted to support efforts to reduce the number of vacant units in the HA.

Note to Reader: The person to be contacted for additional Information about the waiver-grant items in this listing is: Gary VanBuskirk, Director, Homeownership Division, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street SW—Room 4112, Washington, DC 20410–5000, (202) 708–4233.

52. REGULATION: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

PROJECT/ACTIVITY: The Terre Haute, Indiana Housing Authority, Turnkey III

Homeownership Opportunity Program Project IN–36P021006.

NATURE OF REQUIREMENT: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing.

DATE GRANTED: April 3, 1995.

REASON WAIVED: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) Pub. L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Ms. Madeline Hastings, Office of Rental Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW; Room 4226, Washington, DC 20410, Phone: (202) 708–1842. TDD: (202) 708–4594.

53. REGULATION: 24 CFR 882.721, 882.722 and 882.753(c).

PROJECT/ACTIVITY: Housing Authority of the City of Los Angeles, Section 8 project-based certificate program (PBC) assistance for the Hayward Hotel project in Los Angeles, California.

NATURE OF REQUIREMENT: Before a housing agency (HA) can select a unit for PBC assistance and execute a PBC Agreement to Enter Into Housing Assistance Payments Contract (AHAP), an initial inspection of the unit must be completed and the owner must prepare rehabilitation work write-ups. Vacant units must be filled from the HA waiting list.

GRANTED BY: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

DATE GRANTED: April 26, 1995.

REASON WAIVED: The waiver permitting substitution of 66 rehabilitated single room occupancy (SRO) units in the Hayward Hotel for 66 other SRO units in the project that had been brought under PBC Agreement to Enter Into Housing Assistance Payments Contract, was granted to prevent hardship to the occupants of those units who had been promised Section 8 assistance. The 66 non-PBC units were rehabilitated in the same manner as the units designated under the Agreement and in accordance with the PBC program requirements. The waiver of the requirement that vacant units be filled from the HA waiting list, which applies only to occupants of the 66 substitute units, was approved to prevent hardship to the families.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, Department of Housing and Urban Development, 451 Seventh Street, SW; Room 2158, Washington, DC 20410, Phone: (202) 708–3815. TDD: (202) 708–3259.

54. REGULATION: 24 CFR 0.735–204(a)(4).

PROJECT/ACTIVITY: A request was made whether an employee was prohibited from renting a primary residence to a relative with Section 8 assistance.

NATURE OF REQUIREMENT: This Standards off Conduct regulation prohibits HUD employees, with minor exceptions, from acquiring a financial interest in Section 8 subsidies.

GRANTED BY: Nelson A. Díaz, General Counsel.

DATE GRANTED: June 15, 1995.

REASON WAIVER: Renting a primary residence to a family member is not the type of situation covered by § 0.735–204(a)(4) because application of this provision to such a situation is not necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Compliance with all of the program requirements must be present.

[FR Doc. 95–24470 Filed 10–2–95; 8:45 am]

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federal register

Tuesday
October 3, 1995

# Part IV

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 61, et al.**

**Advanced Qualification Program; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 63, 65, 108, 121, and 135**

**[Docket No. 25804, Amendment No. 61–98, 63–30, 65–39, 108–13, 121–250, 135–57]**

**RIN 2120–AF00**

## Advanced Qualification Program

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

**ACTION:** Final rule.

**SUMMARY:** The FAA establishes a new termination date for Special Federal Aviation Regulation (SFAR) No. 58 (55 FR 40275; Oct. 2, 1990), which provides for the approval of an alternate method (known as ''Advanced Qualification Program'' or ''AQP'') for qualifying, training and certifying, and otherwise ensuring the competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained or qualified under parts 121 and 135 of the FAR. This action will establish a new termination date, of October 2, 2000, for SFAR 58 to allow time for the FAA to complete the rulemaking process that will incorporate SFAR 58 into the Federal Aviation Regulations (FAR).

**EFFECTIVE DATE:** September 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Allen, Advanced Qualification Program Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, P.O. Box 20027, Dulles International Airport, Washington, D.C. 20041–2027; telephone (703) 661–0260.

**SUPPLEMENTARY INFORMATION:**

Background

On August 16, 1995, the FAA issued a notice of proposed rulemaking proposing to extend the expiration date of SFAR 58 [60 FR 42764]. The comment period closed on September 5, 1995; two comments were received. The Air line Pilots Association and the Regional Airline Association both supported the extension of SFAR 58 until October 2, 2000. The amendment is adopted as proposed.

Good Cause Justification for Immediate Adoption

The reasons which justified the original issuance of SFAR 58 still exist. Therefore, it is in the public interest to establish a new expiration date for SFAR 58 of October 2, 2000. If the FAA publishes a final rule incorporating SFAR 58 into the regulations before this expiration date, SFAR 58 will be rescinded concurrently. In the meantime, the continuation of SFAR 58 is necessary to permit continued training under this program and to avoid the confusion that would result if the program were discontinued.

For this reason, and because as a voluntary program the AQP imposes no additional burden on any person, the FAA finds that the amendment should be made effective immediately upon issuance. However, interested persons are invited to submit such comments as they desire regarding this amendment. Comments should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments in the Rules Docket.

Benefit/Cost Analysis

AQP is not mandatory. Consequently, those operators who choose to participate in the program would do so only if it was in their best interest. Enough operators have found it in their best interest that AQP has become an important means for meeting the requirements for air carrier training programs. As of March 1995, 18 carriers and 2 manufacturers have either applied to participate or are already participating in the program. AQP gives air carriers flexibility in meeting the safety goals of the training programs in parts 121 and 135 without sacrificing any of the safety benefits derived from those programs. Thus, extending AQP for another 5 years would not impose any additional costs nor decrease the present level of safety. Because this extension—(1) is extending an existing program; (2) is voluntary; and (3) has become an important means for some operators to comply with the training requirements, the FAA finds that a full detailed regulatory evaluation is not necessary.

International Trade Impact Analysis

The amendment would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. Since air carriers will not participate in AQP unless it was in their best interest, they likewise will not participate if it would impose a competitive disadvantage on them. Also, the concept of AQP is being embraced by foreign operators as well.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. Since this action would extend what has become an important means for some air carriers to comply with training requirements, the extension will not impose costs above those that air carriers are already incurring, and certainly not above what they would incur from adopting a part 121 or part 135 training program. Thus, the rule if issued, will not impose a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulation amended 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. Thus, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that the action does not involve a major rule under Executive Order 12291. Moreover, it is not significant under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979).

List of Subjects

*14 CFR Part 61*

Air safety, Air transportation, Aviation safety, Safety.

*14 CFR Part 63*

Air Safety, Air transportation, Airmen, Aviation safety, Safety, Transportation.

*14 CFR Part 65*

Airman, Aviation safety, Air transportation, Aircraft.

*14 CFR Part 108*

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

*14 CFR Part 121*

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

*14 CFR Part 135*

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

The Amendment

In consideration of the foregoing, SFAR 58 (14 CFR parts 65, 108, 121, and 135) of the Federal Aviation Regulations is amended as follows:

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. 106(g); 40108, 40113, 40114, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

3. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

4. The authority citation for part 108 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 45103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, 44704–44705.

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, 45303.

7. In part 121, SFAR 58 is amended by revising paragraph 13 to read as follows:

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

* * * * *

13. *Expiration*. This Special Federal Aviation Regulation terminates on October 2, 2000, unless sooner terminated.

Issued in Washington, DC on September 27, 1995.

David R. Hinson,

*Administrator.*

[FR Doc. 95–24545 Filed 9–28–95; 3:10 pm]

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federal register

Tuesday
October 3, 1995

# Part V

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 107 and 108**
**Unescorted Access Privilege; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 107 and 108**

**[Docket No. 26763; Amendment Nos. 107–7, 108–12]**

**RIN 2120–AE14**

## Unescorted Access Privilege

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is issuing final regulations requiring airport operators and air carriers to conduct an employment investigation and disqualify individuals convicted of certain enumerated crimes from having, or being able to authorize others to have, unescorted access privileges to a security identification display area (SIDA) of a U.S. airport. This rule implements the employment investigation provisions of Section 105 of the Aviation Security Improvement Act of 1990. The rule will enhance the effectiveness of the U.S. civil aviation security system by ensuring that individuals applying for unescorted access privileges do not constitute an unreasonable risk to the security of the aviation system.

**EFFECTIVE DATE:** January 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert Cammorroto (202–267–7723) or Linda Valencia (202–267–8222), Office of Civil Aviation Security Policy and Planning, Policy and Standards Division, (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:**

### Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the amendment number or docket number. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

### Background

Throughout the last decade, the FAA has recognized the need to investigate the backgrounds of individuals authorized to have unescorted access to security-restricted areas at U.S. airports. On November 26, 1985, the FAA amended airport and air carrier security programs to require 5-year background checks for individuals applying for unescorted access authority to the security controlled areas of an airport. The check requires the verification of such individual's employment history and references for the previous 5 years to the extent allowable by law.

The December 21, 1988, destruction of Pan American World Airways Flight 103 by a terrorist bomb while in flight over Lockerbie, Scotland, was the worst disaster of its kind in U.S. civil aviation history. In response to this tragedy, on August 4, 1989, President Bush established the President's Commission on Aviation Security and Terrorism (Commission) (E.O. 12686) to assess the overall effectiveness of the U.S. civil aviation security system.

The Commission's May 15, 1990, report presented a series of recommendations intended to improve the U.S. civil aviation security system. The Commission recommended that Congress enact legislation requiring a criminal history records check for airport employees. The Commission further recommended that the legislation identify certain crimes that indicate a potential security risk, and enable airport operators to deny employment in positions requiring access to security sensitive areas on that basis. The Commission's recommendations formed the basis of the Aviation Security Improvement Act of 1990, Pub. L. 101–604 (the Act).

Section 105(a) of the Aviation Security Improvement Act (the Act) now codified as 49 U.S.C. 44936, added a new provision to the statute. This provision directs the FAA Administrator to promulgate regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports serving air carriers, to such employment investigations, including a criminal history records check, as the Administrator determines necessary to ensure air transportation security.

In March 1991, the aviation industry provided suggestions for implementing Section 105 of the Act through the Aviation Security Advisory Committee (ASAC). These recommendations assisted the FAA in developing its initial notice of proposed rulemaking (NPRM) published in the Federal Register on February 13, 1992 (Notice No. 92–3; 57 FR 5352). In that notice the FAA proposed to require a criminal history records check, using the Federal Bureau of Investigation's (FBI) fingerprint-based national criminal history record filing system, for all individuals (including current employees) with SIDA unescorted access privileges. In that proposal, the FAA used the broad authority delegated to the FAA Administrator in the Act to require an employment investigation, including a criminal history records check.

On March 12, 1992, responding to requests from airport operators and air carriers, the FAA extended the comment period for that proposal from March 16 until May 15, 1992 (Notice No. 92–3A; 57 FR 8834), and announced a series of public meetings. The FAA published the notice outlining the details of the public meetings on April 9, 1992 (Notice No. 92–3B; 57 FR 12396). Public meetings were held in Los Angeles, California on April 28; Ft. Worth, Texas on April 30; and Washington, D.C. on May 12, 1992. The FAA received over 270 written comments to the docket and 66 commenters made oral presentations at the public meetings.

The overwhelming majority of commenters opposed FAA's proposal to require a criminal history records check for all individuals having unescorted access to the SIDA, and the proposal to require escorts for anyone inside the SIDA who did not have such a records check. Specifically, commenters argued that individuals with existing unescorted access privileges should be excluded from the criminal history records check requirement, and that the proposed escorting requirements were neither practical nor cost-effective. Some commenters questioned whether any benefit would result from requiring a criminal history check. Because of these concerns, commenters strongly recommended that the FAA exercise more flexibility in implementing the employment investigation provision of the Act.

### Discussion of the SNPRM

In response to comments received during the public meetings and the FAA's re-evaluation of the NPRM, the FAA issued a supplemental notice of proposed rulemaking (SNPRM) (Notice No. 92–3C; 57 FR 43294) on September 18, 1992. The SNPRM focused more broadly on the employment investigation process for individuals applying for unescorted access privilege. The SNPRM proposed an expanded employment application form, an enhanced 5-year employment history verification and, only where appropriate, a criminal history records check. Under this approach, a criminal history records check would be required only when the employment application process, including the history verification, ''triggers'' a need for one.

The proposed fingerprint-based criminal history records check process was similar to that proposed in the NPRM.

Discussion of SNPRM Comments

The FAA received 34 comments in response to the SNPRM. Commenters included Congressman James L. Oberstar, 12 airport operators, 3 air carriers, 2 individuals, 3 small businesses, 1 state transportation department, the Federal Bureau of Investigation, the U.S. Customs Service and the following aviation organizations: Air Transport Association (ATA), Air Transport Association of Canada (ATAC), Aircraft Owners and Pilots Association (AOPA), Airline Pilots Association (ALPA), Airport Law Enforcement Agencies Network (ALEAN), Airports Association Council International (AACI), American Association of Airport Executives (AAAE), Association of Flight Attendants (AFA), Families of Pan Am 103/Lockerbie, National Air Transportation Association (NATA), and Regional Airline Association (RAA).

Fifteen commenters support the employment investigation proposed in the SNPRM. Several of these commenters commend the FAA for its response and attention in addressing many of their major concerns in the initial notice.

Seven commenters oppose the proposal, arguing against the need for the employment investigation because no documented terrorist act has ever been committed by someone with both unescorted access privileges and a record of conviction for one of the disqualifying crimes listed in the Act. One commenter questions the link between past convictions for disqualifying crimes and future terrorist actions. Two commenters, a member of Congress and the Families of Pan Am 103/Lockerbie, want a more extensive employment investigation than that proposed in the SNPRM. They suggest extending the employment verification portion to 10 years and applying the employment investigation to individuals with existing unescorted access privilege.

Three commenters also discuss the degree of discretion provided the Administrator in implementing the employment investigation requirement of the Act. One commenter states that the Act does not require this regulation and the FAA should not issue a final rule. Another states that the Act requires only an employment investigation with a criminal history check as the Administrator determines necessary. According to this commenter, issuance of a rule is completely discretionary. A third commenter contends that the statute mandates an employment investigation, not a criminal history records check.

*FAA Response:* This rule enhances existing FAA security requirements and supports the objectives of the Act through a cost-effective and practical regulatory program. The FAA's security requirements focus on protecting persons and property in air transportation against acts of criminal violence, air piracy, and terrorism. These acts are neither simple nor uniform, and are certainly not limited to sophisticated acts of international terrorists with political motives or acts of deranged individuals. Also of concern are individuals deliberately committing, or deliberately or unknowingly assisting in the commission of criminal acts against aviation for financial gain or reprisal. For example, individuals with a history of felony narcotics distribution may be more susceptible to exploitation by those wishing to target a passenger aircraft. In this scenario, the employee would wittingly assist in placing a package of purported narcotics on the aircraft, only to find later that the packet actually contained an explosives device. A trust is placed in individuals authorized to have unescorted access, and it is reasonable to establish measures to reduce the likelihood that they will present a security risk to civil aviation.

The U.S. aviation industry has not experienced incidents in which there was a direct relation between the disqualifying offenses and a serious security incident, such as a terrorist bombing or hijacking. However, the Act indicates Congress' concern that an individual's criminal history could show a disposition to engage in such conduct in the future, which could result in a serious security incident. Moreover, it is a reasonable and feasible precaution to prohibit unescorted access to individuals with a criminal record for certain types of crimes. This rule uses practices similar to other industry standards (e.g., bankers, stockbrokers and employees at nuclear facilities).

The Act requires the FAA to issue regulations subjecting individuals with unescorted access to U.S. or foreign air carrier aircraft, or to SIDAs of U.S. airports, to such employment investigations, including a criminal history records check, as the Administrator determines necessary to ensure air transportation security. While the Act gives the Administrator flexibility in implementing the employment investigation provision, the Congress clearly contemplated that granting unescorted access privileges would be tied to some type of employment investigation.

In response to the public hearings and written comments, the FAA modified the initial proposal and developed the SNPRM to enhance aviation security in a more cost-effective manner. The Conference Report on the Department of Transportation Fiscal Year 1993 Appropriations legislation addressed the FAA's SNPRM stating:

> The conferees have agreed to delete the language proposed by the House that would have prohibited the Federal Aviation Administration from implementing a rule to require criminal background checks of airline and airport employees. The conferees' action is based on the Federal Aviation Administration's Supplemental Notice of Proposed Rulemaking published in the September 18, 1992, Federal Register in which the Federal Aviation Administration revised an earlier proposed rulemaking. The conferees recognize that the Federal Aviation Administration has used its discretionary authority to address the many concerns raised by the industry groups about the operational, financial and constitutional issues associated with its earlier proposal, and have concurred that the Federal Aviation Administration should not be prohibited from moving forward with this approach.

This action clarified Congress' view that the SNPRM conforms with the legislative intent of the Act.

Discussion of the Final Rule

The FAA developed this final rule based on the legislative mandate and the comments received during the rulemaking process. This rule amends 14 CFR parts 107 and 108; and parts 107 and 108 of the Federal Aviation Regulations (FAR). The rule expands the pre-existing requirements for an investigation into the background of individuals applying for unescorted access privileges to the SIDA of U.S. airports by providing specific guidelines for requirements.

The final rule augments and clarifies the process required to satisfactorily determine the eligibility of individuals for unescorted access privileges. This rule requires the employment investigation to include: provision of a 10-year employment history by those applying for access; verification of the most recent 5 years of that history by the employer; and the completion of a criminal history records check when specific conditions are identified as a result of the information obtained through the investigation process.

Similar in concept to the SNPRM, this final rule strengthens the existing employment investigation requirement by providing specific guidance on the type of information that must be

obtained and evaluated, identifying specific ''triggers'' that indicate a need to conduct a criminal history records check, and establishing recordkeeping requirements. This final rule differs from the SNPRM in that it requires individuals applying for unescorted access privileges to provide their employment history for a period of 10 years prior to the date of application rather than 5 years. While the employer will have to review the entire application, consistent with the SNPRM, only the most recent 5 years of this history need be verified as part of the employment investigation review. Hence, while an applicant will have to provide additional employment history information, this will not materially increase the burden on airport operators, air carriers or other non-air-carrier airport tenants involved in granting unescorted access privileges. The FAA believes that this approach increases the effectiveness of the rule in identifying individuals with unexplained gaps in employment who may have been convicted of the disqualifying crimes during the past 10 years and will afford employers additional information on which to base access determinations.

This final rule also modifies a key term used throughout the rule to further clarify its intent. Since it was used in the Act, the term ''employment investigation'' was used extensively in the NPRM and the SNPRM. While both notices specified that the ''employment investigation'' is really related to access authority and not necessarily to employment decisions, the final rule uses the term ''access investigation.'' The FAA believes that this term better describes the intent of the rule.

The FAA Act of 1958 was recodified and appeared at 49 U.S.C. Subtitle VII, then under Public Law 103–272, (effective July 5, 1994) recoding occurred under 49 U.S.C. Code ''Transportation''. This Final Rule lists both the new statutory numbers for crimes committed and the former citations, in part because FBI records are likely to only have the latter citations.

Another modification to the SNPRM is that the FAA will act as the clearinghouse for criminal history records checks. The procedures for processing fingerprint cards and associated fees are discussed later in this preamble under § 107.31(i), 'Fingerprint Processing.''

Further Action Considered

Although this final rule makes an important improvement to the civil aviation security system, and is fully consistent with the rulemaking record, the FAA is currently evaluating whether further changes may be warranted. Subsequent to the close of the comment period for the SNPRM, this country has experienced two major acts of domestic terrorism. The World Trade Center bombing and the recent bombing of a Federal office building in Oklahoma City are evidence of the threat of terrorism within the United States. While neither incident involved an aviation target or appears to have involved individuals who had a disqualifying criminal record that would have been disclosed by an FBI fingerprint check, the incidents to raise questions about whether a broader rule should be considered in light of the general level of threat. It also raises questions about whether the statutory authority should be expanded to include other persons with security responsibilities, such as checkpoint screeners, who do not necessarily have unescorted access to air carrier aircraft or to the secured area of an airport. However, the FAA has concluded that it is essential and appropriate to move forward with this final rule on the existing record and not further delay action until the FAA's evaluation and possible further rulemaking are completed.

The FAA intends to actively consult with airport operators and air carriers as part of this evaluation. The effect of this rule and its actual implementation by airports and air carriers will be followed closely from the outset. In addition, input will be sought from the Aviation Security Advisory Committee. The FAA will determine what further actions may be necessary based on the evaluation. The FAA also will review intelligence information in relation to the possible impact of a more extensive criminal history check requirement.

Section-by-Section Analysis

*Section 107.1 Applicability and Definitions*

Escort

In the SNPRM, the FAA defined the term ''escort'' in § 107.1(b)(3). One commenter, NATA, states that the proposed definition of escort implies that this function and any associated responses must be performed by the same individual. NATA suggests that an individual other than the one performing the escort be allowed to perform follow-up actions, and that escorting by electronic means be allowed.

*FAA Response:* This rule retains the definition of ''escort'' that was included in the SNPRM, with minor modifications. Only an individual authorized by the airport operator to have access to areas controlled for security purposes may perform escorting. Specific action must be taken, in accordance with local airport procedures, if the individual under escort engages in activities other than those for which the escorted access is granted. The definition is modified by adding a sentence that explains that necessary responsive actions can be taken by the escort or other authorized individuals.

The definition of escort adopted in this rule includes a performance standard. The definition provides the latitude to use various methods and procedures for the escort as long as they meet the established standard. For example, an airport could choose to establish escorting procedures for its general aviation areas that use electronic means and prescribe specific follow-up actions.

*Section 107.31 Access Investigation*

*107.31(a)—Applicability*

Area Covered

Six commenters to the SNPRM discuss the applicability of the regulation to the SIDA. RAA, ATA, and AOPA contend that at some airports broad SIDA definitions include the entire air operations areas (AOA). The commenters believe the FAA should mandate a consistently defined, limited SIDA.

An airport operator requests a broader applicability of the rule stating that two different levels of employment verification for SIDA and non-SIDA areas controlled for security purposes will be confusing. This operator recommends the rule apply uniformly to all areas that require identification badges. AACI and AAAE contend that one standard should apply to all, and they are particularly concerned that individuals performing air carrier screening are not included in the employment investigation rulemaking.

*FAA Response:* This rule applies only to airports that require continuous display of airport-approved identification, *i.e.*, the SIDA as defined in § 107.25. The SIDA typically includes the secured area of an airport (§ 107.14 secured area) and some or all of the air operations areas (§ 107.13).

FAA guidance has defined the areas and types of operations for inclusion within the SIDA. Any expansion of an airport SIDA requires FAA approval. In such instances, application of the policy guidance assures uniformity to the extent practical. Given the varied operational areas at airports, it is not

practical for the FAA to further define SIDA in the regulation.

The FAA has clarified that this rule does not apply to smaller airports that do not have a continuous display requirement by removing the reference to these airports contained in § 107.31(a)(2) of the SNPRM. However, if an airport has an area controlled for security reasons that is not a SIDA, the existing 5-year employment history verification continues to apply to individuals requesting unescorted access authority.

The access investigation requirement of this rule applies to individuals seeking unescorted access privileges in the SIDA as well as those in a position to authorize others to have such access and supersedes the 5-year employment history verification in the airport security program for the covered individuals. The issuance or denial of an identification credential for continuous display in the SIDA serves as the vehicle for implementation of this requirement from a practical and enforcement standpoint.

For individuals applying for positions that do not require SIDA unescorted access privileges (and thus are not covered by this rule), the existing security program language requiring the 5-year employment history verification will continue to apply. This includes security screening personnel and any other individuals with unescorted access only to security-controlled areas outside of a SIDA. While having somewhat different requirements may result in some extra administrative effort, the commenters did not provide any specific information showing that this will significantly increase the burden on airports. Except for the authority to access an applicant's criminal history record, an employer may use the application process specified in this rule in all circumstances.

Definition of Employer

One commenter points out that the SNPRM implies that all persons for whom an airport operator may authorize or deny unescorted access privileges are employees of the airport subject to being hired or fired by the airport operator. This commenter explains that many individuals applying for unescorted access privileges are not airport operator employees.

Two commenters address the consequences of the employment investigation proposed in the SNPRM on the employment process. One commenter believes the rule would affect the issuance of unescorted access authority rather than employment. The other commenter states that an employer would probably not hire a person who, based on preliminary employment investigation results, cannot be authorized for unescorted access privileges without going through a FBI criminal record history check. This commenter assumes the termination of the employment inquiry if it appears that a criminal records check is needed.

*FAA Response:* The FAA agrees that the intent of the investigation is to determine an individual's eligibility for unescorted access authority. The Act, and the final rule, do not specifically prohibit the employment of disqualified individuals; rather, they prohibit individuals convicted of certain enumerated crimes in the past 10 years from being employed in a position having unescorted access to secured areas of a U.S. airport or to U.S. and foreign air carrier aircraft. As previously noted, the final rule uses the term ''access investigation'' rather than ''employment investigation,'' which was used in the NPRM and SNPRM. This change was made to clarify the intent of the rule. The FAA recognizes that individuals affected by the rule include current employees not previously granted unescorted access authority and prospective employees of an airport operator, air carrier, tenants other than air carriers, and contractors whose positions require unescorted access. This rule does not attempt to establish guidance, beyond ineligibility for unescorted access privileges, for the disposition of an individual whose access investigation reveals a conviction for a disqualifying crime.

Individuals With Current Access Authority

Sixteen commenters address exempting individuals with existing unescorted access authority from the proposed employment investigation. Fifteen of these commenters (including air carriers, airport operators, unions, and non-air-carrier airport tenants) fully support the language in the SNPRM that would exempt from the required employment investigation all individuals who have current unescorted access authority on the effective date of the final rule. This support follows the recommendations made by the ASAC and numerous comments received in response to the initial notice and the SNPRM.

One commenter (Congressman Oberstar) opposes the exclusion for individuals with existing access authority. Congressman Oberstar contends that the Commission's report recommendation and the Act's employment investigation provision are intended to cover individuals with existing authority and individuals applying for unescorted access privilege. He argues that the existing 5-year employment history verification is not subject to FAA approval, and the FAA has not provided guidance on what constitutes an acceptable check. Therefore, Congressman Oberstar states that the final rule must ''require that current employment investigation programs conform with those mandated in the final rule'' and that ''employers with non-conforming programs must be required to conduct 5-year employment checks of current employees to assure that they have undergone the same scrutiny as applicants.''

One commenter is uncertain whether individuals exempted under the proposal with a previous conviction for a disqualifying crime would lose their privileges for unescorted access.

*FAA Response:* While the Act gives the FAA authority to require employment investigations for individuals currently authorized for unescorted access privileges, the Act confers discretion on the FAA Administrator on methods for imposing such a requirement. Individuals authorized to have unescorted access privileges since November 26, 1985, have been subjected to a 5-year employment history verification required by the FAA in the security programs of airport operators and air carriers. Since granting these individuals unescorted access privileges, airport operators and air carriers have had the opportunity to observe the individual's conduct.

The benefits, if any, of subjecting current employees with unescorted access authority to the proposed access investigation would not justify the disruption and cost that such a requirement would place on the air carriers and airport operators. The estimated cost for verifying employment histories of all existing employees would be an additional $5.4 million. Further, because of typically high turnover rates, much of the employee population with unescorted access will have been subjected to the expanded background check within a relatively short period. Therefore, the FAA concludes that air transportation security does not require the retroactive application of this rule to individuals with current unescorted access authority.

This rule does not require individuals currently authorized to have unescorted access to disclose a past conviction for a disqualifying crime. However, if a conviction occurs after the effective date

of this rule, an individual with unescorted access authority will be subject to self-disclosure and disqualification from unescorted access privileges (see the Individual Accountability requirements of § 107.31(l) and § 108.33(h)).

120-Day Effective Date

Ten commenters address the timeframe between the final rule issuance date and the effective date the industry must begin to comply with the employee investigation requirements proposed in the SNPRM. Two commenters agree with the 90-day implementation period and seven commenters argue for a longer period of time. These commenters contend that additional time is needed for airport operators, air carriers, and airport tenants to set up the administrative procedures necessary to implement the rule, coordinate with other airports on rights of transfer, budget and plan for required expenditures, and train personnel to implement the rule. Another states that an extended time period will prevent difficulties similar to those being experienced with the implementation of § 107.14. ATA suggests a period of six months to a year and another commenter proposes phasing in the regulation, starting with the Category X airports one year after the effective date. AACI and AAAE recommend that the effective date, rather than the Federal Register publication date, be used to exclude individuals holding existing unescorted access privileges from the employment investigation requirements.

*FAA Response:* The affected parties have been provided ample opportunities to comment on the implementation of Section 105 of the Act through ASAC recommendations, and in response to the NPRM (for which the comment period was extended), three public meetings, and the revised proposal in the SNPRM. The access investigation requirements of this rule should not place an excessive administrative burden on airport operators and air carriers. The requirement to modify the existing 5-year employment history verification and establish a procedure to conduct a criminal history records check, where necessary, utilizes many existing practices and procedures. However, as this rule will affect a wide spectrum of airport tenants, and in hopes of ensuring a smooth and orderly transition to the new procedures, the FAA is making the rule effective 120 days after publication in the Federal Register.

*Section 107.31(b)—Access Investigation Requirements*

Coverage of Access Investigation

Of the 15 commenters responding on this issue, 13 concur with the FAA's proposal to use the 5-year rather than a 10-year employment history verification as the primary screening procedure. The commenters supporting the 5-year verification argue that covering more than 5 years would produce less useful information because it would be difficult to find previous employers to provide reliable references, require more staff and take a longer time to complete, resulting in additional costs. According to these commenters, the expanded application form, which includes the applicant's certification as to prior criminal convictions, coupled with the enhanced 5-year verification is sufficient to alert management of a need for further investigation. One air carrier comments that it currently requires applicants to provide 10 years of employment information, although it only verifies the previous 5 years.

The two commenters opposing the 5-year employment verification, Congressman Oberstar and the Families of Pan Am 103, believe that it will not reveal convictions that may have occurred in the previous 10 years and that the proposal does not comply with the Act.

*FAA Response:* At the SNPRM stage, the FAA considered increasing the employment history verification from 5 years to 10 years. It determined that to do so would increase the costs and time spent on the verification without appreciably enhancing aviation security. This could result in triggering relatively few additional records checks, but at an additional cost of at least $5.50 per access investigation or about $9 million over the next decade. However, as a result of the comments, the FAA carefully reviewed the 10-year employment history issue. The FAA determined that it would be useful and reasonable to require individual applicants to provide a 10-year employment history. The additional information will increase the likelihood of identifying 12-month employment gaps and provide an additional decision tool to employers.

Under the rule, airport operators, air carriers and other non-air-carrier airport tenants are required to verify only the most recent 5 years. However, employment gaps of more than 12 months must be resolved for the entire 10-year period or a records check accomplished. From a practical viewpoint, the verification of an individual's 5-year employment history provides an accurate indicator of the individual's background and of the overall veracity of the information provided by the applicant on the form. However, the additional employment history information available to the employer enhances the 5-year verification portion and increases the deterrent value of the application process. Applicants planning to fabricate employment history information will be faced with twice the challenge and their chance of discovery will thus be increased. Truthful applicants will identify employment gaps that require further evaluation.

The 10-year period is also covered by requiring the applicant to list on the application convictions occurring in the past 10 years for any disqualifying crimes. The application form also must notify individuals that they will be subject to an employment history verification and possibly an FBI criminal history records check. Individuals who are subject to a criminal history records check would be disqualified if their record discloses a conviction for any of the listed crimes in the previous 10 years.

Because the disqualifying crimes are serious felonies, an arrest, conviction, and incarceration would normally show up as a gap in the individual's employment history, thus triggering a criminal history records check. The requirement to conduct a criminal history records check should help discourage anyone with a conviction for one of the disqualifying crimes from applying for a position requiring unescorted access authority.

Convictions for Disqualifying Crimes

Twelve commenters discuss the list of convictions for disqualifying crimes. Three of the commenters specifically agree that arson should be a disqualifying crime, as the FAA proposed in the SNPRM. AACI and AAAE oppose having arson included as a disqualifying crime. These organizations argue that, in their view, there is no significant history of arson occurring on an airport ramp.

Ten commenters support disqualifying from unescorted access privileges a person found not guilty by reason of insanity for any of the disqualifying crimes. Some of the commenters argue that insanity is not a crime and, therefore, some form of rehabilitation should be allowed. As an example, the commenters refer to the State of California system that requires that a person found not guilty by reason of insanity must be certified as rehabilitated by a court before the individual's rights are restored. ATA

points out that, in accordance with its reading of the Act and the Americans with Disability Act, the FAA has the legal authority and right to include insanity as a disqualifying factor. Another commenter states that insanity as a disqualifying factor should be determined on a case-by-case basis and that the final determination should be based on national and local FAA field office guidelines to ensure nationwide consistency.

AACI and AAAE state that ''certain crimes aboard aircraft in flight'' is too vague and that this disqualifying crime needs to be better explained. They are also concerned that the regulation would not permit an employer to take into account rehabilitation. They argue that the Act is arbitrary because it assumes rehabilitation would ''magically'' occur after 10 years, but cannot be taken into account before the 10 years for purposes of allowing unescorted access.

Three commenters state that the regulation should not limit the employer to those crimes on the list. In their view, an employer should have some discretion to include other crimes or conditions as disqualifying.

Two commenters assert there should be measures for punishing applicants who falsify the information they provide on the application forms or, at a minimum, disqualifying the individual from unescorted access. One of these commenters states that individuals convicted of any of the disqualifying crimes would not hesitate to falsify an application form and that stronger measures are needed, such as making it a Federal crime to falsify such information.

*FAA Response:* As proposed, this rule adds felony arson to the list of disqualifying crimes. (In the SNPRM, FAA proposed ''arson''; the rationale for the clarifying change can be found below.) The deliberate nature of the offense and the safety and practical considerations of fueling aircraft make it logical to do so. Although the FAA is not aware of any instance where an individual with unescorted access privileges ever perpetrated an act of arson at an airport, arson has occurred at airports and is too dangerous an act to omit it from the list of disqualifying crimes.

Also, in response to comments received on the initial notice and the SNPRM, this rule adds ''not-guilty by reason of insanity'' for any of the disqualifying crimes as a disqualifying factor. While recognizing that insanity is not a crime, the FAA concludes that insanity associated with a disqualifying crime should be a disqualifying condition because of the seriousness of these crimes and the difficulty involved in ascertaining recovery.

The FAA has made some minor clarifying changes to the introductory language of § 107.31(b). The phrase ''in any jurisdiction'' has been added to parallel the language of the Act. Also added is the phrase ''a crime involving * * *'' to the enumerated offenses in order to make clear that the intent of the rule is to disqualify an individual who has been convicted of one of the disqualifying offenses, even if the name of the statute under which the individual was convicted does not exactly match the language of the final rule. As long as the conviction involves a crime specified in the rule, the individual would be disqualified.

In its comment to the NPRM, the Department of Justice's Criminal Division requested several changes to the rule language to which the FAA has agreed. The Division suggested that we limit disqualifying convictions for arson to felony arson in order to exclude instances of minor vandalism. The Division also requested that some of the disqualifying offenses be further defined. These revisions include:

- § 107.31(b)(2)(xvii): the phrase ''or hostage taking'' has been added after ''kidnapping'';
- § 107.31(b)(2)(xix): the phrase ''or aggravated sexual abuse'' has been added after ''rape'';
- § 107.31(b)(2)(xx): the word ''use'' has been added before ''sale.''

It is the FAA's understanding and intent that these changes clarify the intent of Congress but do not substantively expand the list of disqualifying crimes. The Criminal Division also requested that § 107.31(b)(2)(xxv) be revised to include ''attempts'' to commit any of the aforementioned criminal acts. The Division states that while this section, as proposed, included a conviction for conspiracy to commit any of the enumerated offenses (as required by the Act), the conduct underlying an attempt may be more serious than that required to support a conviction of conspiracy. The FAA has therefore revised this section to include the phrase ''or attempt.''

The Act provides no discretion for rehabilitation, requiring only a 10-year period from the time of the conviction for the disqualifying offense. This rule also includes the 10-year period for instances of not guilty by reason of insanity.

In the rule, the FAA does not attempt to further define the commission of ''certain crimes aboard aircraft'' because it is one of the named disqualifying crimes from the Act. An individual's criminal record would reflect convictions for this offense as a specific violation listed in 49 U.S.C. 46506.

This rule limits the mandatory disqualifying crimes to those required by the statute and the additional disqualifiers discussed above. Apart from meeting the requirements of this rule for unescorted access privileges, an airport operator and air carrier will retain discretion to determine the suitability and qualifications of applicants for unescorted access privileges based on any other information available to them.

This rule does not include penalties for falsifying application information. It is not a disqualifying condition covered by the Act, and the decision to deny access based upon falsification would be a local determination. However, substantial inconsistencies between required information provided on the application and information obtained during the access investigation would trigger a criminal history records check.

If the access investigation discloses a conviction for a disqualifying crime in the previous 10 years measured from the date the verification is initiated, the individual may not be granted unescorted access authority. The Act does not allow the consideration of the possible rehabilitation of an individual.

The disqualifying crimes identified in this rule include specific sections of 49 U.S.C. Chapters 463 and 465, sections of the United States Criminal Code, offenses named in the Act, and two additional disqualifiers.

The specific sections of 49 U.S.C. Chapters 463 and 465 are: (b) § 46706 forgery of certificates, false marking of aircraft and other aircraft registration violations; (c) § 46308 interference with air navigation; (h) § 46312 improper transportation of a hazardous material; (i) § 46502 aircraft piracy; (j) § 46504 interference with flightcrew members or flight attendants; (k) § 46506 commission of certain crimes abroad aircraft in flight; (l) § 46505 carrying a weapon or explosive aboard an aircraft; (m) § 46507 conveying false information and threats; (n) § 46502(b) aircraft piracy outside the special aircraft jurisdiction of the United States; (q) § 46315 lighting violations involving transporting controlled substances; and (r) § 46314 unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements.

The disqualifying crime in 18 U.S.C. 32 is the destruction of an aircraft or aircraft facility.

The other disqualifying crimes are: murder; assault with intent to murder;

espionage; sedition; kidnapping or hostage taking; treason; rape or aggravated sexual abuse; unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; felony arson; conspiracy or attempt to commit any of these criminal acts; or a finding of not guilty by reason of insanity for any of these criminal acts.

This rule does not limit the ability of airport operators and air carriers to review an individual's complete FBI criminal history record, although the record may not be requested unless one of the regulatory triggers is met. However, any decision to deny unescorted access may be attributed to this rule only if it is based on the individual's conviction within the previous 10 years of an enumerated crime. Any other adverse information contained in the criminal record does not disqualify an individual under this rule.

*Section 107.31(c)—Elements of Access Investigations*

Employment History Verification

A number of commenters support the process for conducting the verification outlined in the SNPRM. In the SNPRM, the FAA proposed that applicants be required to prove their identity by providing two forms of identification (ID), including a photo ID. In the SNPRM, the FAA proposed that applicants would have to explain employment gaps of more than 12 months in the previous 5 years, and that employers would have to verify information on the application for unescorted access in writing, by telephone, or in person. The FAA solicited comments on whether other means of verifying an individual's employment, such as written documentation, should be acceptable in the verification process.

Two commenters specifically support accepting documentation instead of telephone calls or visits to previous employers. One commenter suggests that legitimate gaps in employment can be documented by copies of school records or certified letters of references from physicians, clergy, or other professionals. Two commenters caution that the rule could have the unintended consequence of generating greater paperwork burdens on employers who must keep records of how they verified employment. Another commenter opposes adding security-related information requirements to its application forms, fearing that such forms could become needlessly lengthy.

*FAA Response:* This rule specifies the information required on the application, requires proof of the individual's identity, and requires verification of representations made by the individual. The FAA has crafted the rule using existing industry procedures and practices where possible to avoid creating unnecessary paperwork burdens. The individual applying for unescorted access privileges must complete an application form that includes: (1) the individual's full name, as well as any aliases or nicknames; (2) the dates, names, phone numbers, and addresses of the individual's previous employers for the last 10 years, with explanations for any gaps in employment of more than 12 months; (3) a notice that the individual will be subject to an employment history verification and possibly a criminal history records check; and (4) a question asking if the individual has been convicted of any of the disqualifying crimes or conditions during the previous 10 years.

To assist the applicant in understanding the question on convictions, it would be advisable for the application to include a list of the disqualifying crimes or conditions. This rule permits supplementing an existing application form with a separate sheet requesting the required information and questions.

The information on the application will help identify applicants who may have a disqualifying conviction. For example, an unexplained gap in employment may have occurred due to incarceration for a conviction of a disqualifying crime. The airport operator is responsible for verifying, or accepting certification that the information required on the employment application was verified, to the extent necessary, to validate representations made regarding the most recent 5-year period. This process is similar to that used for the existing 5-year employment verification conducted by telephone, in writing, or in person.

This rule allows the use of documentation to verify an individual's previous employment history. However, it is important for airport operators and air carriers to carefully examine the documentation provided to guard against counterfeit documentation.

In cases where a previous employer has gone out of business, a reasonable attempt to verify the period of prior employment should be made. Pay stubs, tax records or other documentation may be used to support the statements on the application.

Section 107.31(n) requires maintaining a record of the method used to verify the applicant's most recent 5 years of employment and the results obtained. Section 107.31(n) also discusses the specific recordkeeping requirements.

Conditions Requiring a Criminal History Records Check

Four commenters address the conditions that ''trigger'' the requirement for an FBI criminal history records check. One commenter fully supports the triggers proposed in the SNPRM although it requests that the triggers not be considered as limitations. This commenter suggests that an airport operator or air carrier could elect to conduct a complete criminal history records check if, for example, it found an unexplained gap in employment of less than 12 months. Another commenter questions the adequacy of a 12-month period asserting that a person could serve less than 12 months for a disqualifying crime or could be allowed to plead guilty to a lesser crime.

AACI and AAAE believe that two of the conditions triggering a check are virtually identical to each other. These are: (1) the individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by the rule and that which is obtained through the verification process; and (2) information becomes available during the employment history verification indicating a possible conviction for one of the disqualifying crimes.

*FAA Response:* If one or more of the conditions or ''triggers'' established by the rule is activated, a fingerprint-based check of the criminal records maintained by the FBI must be completed prior to determining if unescorted access authority will be granted. An airport operator or air carrier is not permitted to establish additional triggers for requesting a criminal check under the authority provided by this rule.

The Act provides the statutory authority for airport operators and air carriers to access FBI records. The Act has been implemented by these regulations, which limit the circumstances under which the airport operator or air carrier can get the criminal history record. However, on its own authority, a potential employer could disqualify someone from unescorted access authority or refuse to hire an individual for an unexplained gap in employment of less than 12 months, or for any other reason. Of course, these actions would have to be

consistent with other applicable laws. Also under its own authority, an employer could apply the employment verification (but not the FBI criminal history records check), to any employees, not just those covered by this rule.

The ''triggers'' or conditions for the criminal history records check are based on information supplied by the aviation industry on the criteria used by some air carriers to screen job applicants. The combination of triggers provides the appropriate conditions to trigger the requirement for further review of the individual's background through a criminal history records check.

Under the first trigger, an individual who is not able to adequately account for 12 months or more of unemployment over the past 10 years in a manner that substantiates that he or she was not incarcerated for a disqualifying crime would be subject to a criminal history records check. Note that while there is no requirement to verify the information in an applicant's employment history for years 6 to 10, there is an obligation to resolve periods of unemployment of more than 12 months. Unemployment for a 12-month period or more does not automatically trigger a check. Rather, the criminal check is required when the period of unemployment cannot be verified through the checking of appropriate documentation or references. For example, a gap can be satisfactorily explained by receipts for unemployment compensation, travel records, or other information providing sufficient evidence of an individual's whereabouts. In instances where an individual was self-employed, tax records, billing records, work orders or other means can be used to support the claims made on the application.

Second, a criminal history records check is triggered if there is an inability to substantiate statements made, or if there are significant inconsistencies between the information provided by the applicant or the information obtained during the employment verification. This requirement is intentionally defined using broad terms to allow the airport operator and employer to determine what is acceptable. However, if an individual's employment cannot be verified, this is considered an inability to substantiate statements made.

Third, if information becomes available during the course of the access investigation indicating a possible conviction for one of the disqualifying crimes, a criminal history records check is required.

Responding to the question raised by AACI and AAAE, there is a significant difference between finding out during the access investigation process that information provided was not correct versus finding information that indicates the individual may have a conviction for a disqualifying crime. If incorrect information is provided, it does not necessarily indicate the presence of a disqualifying conviction that raises questions about the individual's truthfulness. An individual's truthfulness is a key component of the access investigation process. Lack of veracity suggest the need to investigate further to determine if the person is trying to conceal a conviction for a disqualifying crime.

The purpose of the last trigger is to identify individuals that may require a criminal check based on any positive information identified during the access investigation. The trigger is intended to substantiate information provided.

*Section 107.31(d)—Escorted Access*

Under § 107.31(d) of the SNPRM, an individual who does not have unescorted access privileges may be permitted to enter a security area under escort. Five commenters object to allowing an individual who is the subject of a criminal history investigation access to a secured area even under escort because an on-going investigation indicates the likelihood of a criminal record. Three commenters also believe that the escort language proposed in § 107.31(d) of SNPRM is inconsistent with the FAA's policy in § 107.14.

*FAA Response:* This rule requires individuals who have not been authorized to have unescorted access authority to be under escort, as defined in § 107.1(b)(3), while the SIDA. The employer retains the option of completing the access investigation prior to hiring an individual needing unescorted access privileges rather than providing an escort while the investigation is pending. The primary means of determining an individual's eligibility for unescorted access is the access investigation, including a 5-year employment history verification, which normally takes from 5 to 10 days to complete. Thus, escorting is not necessary for most individuals while undergoing the check because the applicants would not be employed in a position whose utility is predicated on unescorted access until completion of the employment history verification.

The primary reason for security access under this rule is for individuals awaiting a criminal history records check.

Escorted access is permissible while in the security sensitive area even though a criminal history records check has been triggered. A criminal history records check may take from 30 to 90 days to complete; escorted access is allowable when the employment history verification triggers one of the conditions requiring a criminal check. There is nothing in the rule language that requires an airport operator to provide escorted access into a SIDA to an individual undergoing a criminal history records check.

Under the FAA's policy on § 107.14(a) access controls, an individual with § 107.14(a) access privileges may not be escorted through an access point meeting the requirements of § 107.14. Each person with § 107.14(a) access must be subjected to the access control system. Because § 107.31(d) is applicable only to individuals not authorized for unescorted access, the escort language in this section is consistent with the FAA's policy on § 107.14.

*Section 107.31(e)—Exceptions to the Investigation Requirements*

Six commenters respond to the proposed exceptions from the employment investigation included in the SNPRM. The exceptions included Federal, State, and local government employees who as a condition of employment have been subject to an employment investigation; crew members of foreign air carriers covered by alternate security arrangements; individuals who have been continuously employed in a position requiring unescorted access by another airport operator, tenant, or air carrier; and individuals who have been authorized access to the U.S. Customs Service security area of an airport.

Under this rule, certain categories of individuals are excluded from the access investigation requirement. The FAA expects each airport operator to develop the procedures it uses to implement this section and, where appropriate, issue the individual identification media indicating authorization for unescorted access privileges.

Government Employees

Two commenters request selective application of the exception for Federal, State, and local government employees because employment verification by different entities may not be as stringent as that proposed in the SNPRM. The commenters also raise concerns over the issue of Federal and local law enforcement officers observing the airport's access rules and requirements. Another commenter wants to ensure that the final rule does not alter the

access authority of FAA Safety Inspectors using Form 8000–39.

*FAA Response:* This rule adopts the language proposed in the SNPRM that no additional investigation is required for Federal, state, and local government employees who have been subjected to an employment investigation by their respective agencies. Typically, the government employer subjects applicants to an employment investigation that is at least equivalent to that proposed in this rule. For example, both Standard Form 171 and Optional Form 306 requires Federal applicants to disclose convictions, and the Office of Personnel Management, where appropriate, conducts a criminal history records check. The rule also provides an option to except state and local governments. This exception will reduce the cost and burden of implementing this rule, while maintaining an effective level of security. Airport operators should work with representatives from the Federal, state and local government agencies to resolve the type of biographical information needed to receive the identification media.

With regard to using Form 8000–39, this rule will not have any effect. Form 8000–39 will continue to authorize the FAA Inspectors to be present in an air operations areas to conduct short term duties associated with their safety related responsibilities.

Foreign Air Carrier Employees

Five commenters address the application of the employment investigation to employees of foreign air carriers. ATA believes the alternate security arrangement for foreign air carrier flightcrew members included in the SNPRM creates ''serious competitive imbalances between U.S. and foreign carriers. . . .'' ATA implies that the advantage would be to the foreign carriers.

ATAC states that it does not object to the requirement to conduct employment investigations for individuals employed by Canadian carriers in the U.S. applying for unescorted access. However, ATAC contends that the alternative program for transient air crews is unnecessary because Canadian carriers already subject their air crews to a ''criminal/subversive/financial security check'' before a Transport Canada Airside Restricted Area Pass to operate from Canadian airports is granted. ATAC argues that this security check exceeds the employment investigation requirement in the SNPRM and that the FAA should, therefore, allow Canadian air crews unrestricted access in U.S. airports or at least to areas and offices necessary for operational functions.

A foreign air carrier raises several concerns. The first is related to section 105(a) of the Act which states: ''Nothing in this subsection shall be construed as requiring investigations or record checks where such investigations or record checks are prohibited by applicable laws of a foreign government.''

This commenter states that the investigation of employees hired in another country and assigned to duty in the U.S. could require an investigation of records in some other country where privacy laws prohibit such an investigation. The commenter recommends addressing this conflict in the rule by stating that such investigations be performed only to the extent permitted by law in the foreign country.

This foreign air carrier requests that the alternate security procedures be expanded to include all crew members and to areas beyond the footprint of the aircraft. (The preamble to the SNPRM explained an example of an alternate system as language in the airport security program permitting a foreign air carrier flightcrew member to have unescorted access or movement limited to the footprint of their aircraft.) The commenter asks that the FAA's final rule explicitly require airport operators to consult with foreign air carriers to identify areas to which crew members need access using the alternate security arrangement.

This carrier also suggests that the SNPRM be revised to allow foreign air carriers to use temporary personnel without performing an employment investigation. According to the commenter, these personnel could be subject to alternate security arrangements, specified in an airport operator security program, restricting access of such personnel to the areas necessary for performance of their jobs. The carrier contends that the revision is needed because foreign air carriers often require services of special relief personnel at particular airports for brief periods. The commenter believes that temporary duty assignments are vital to foreign air carriers, which have significantly fewer permanent personnel based in the U.S. than do domestic carriers. Therefore, an employment investigation of such employees is not feasible because it would counteract the flexibility needed to quickly hire temporary employees for unanticipated increases in workload.

*FAA Response:* This rule adopts the proposal outlined in the SNPRM, with one modification for foreign air carrier employees. The Act, and hence this rule, apply only to U.S. airports. Therefore, under this rule, foreign nationals and U.S. citizens working in the U.S. for a foreign air carrier will be subject to an access investigation for unescorted access privileges in a manner similar to non-air-carrier airport tenants. While the airport operator is responsible for ensuring that the investigation is completed, the foreign air carrier could perform the employment history verification as it currently does at most airports.

This rule allows an airport operator to implement an alternate security arrangement in its approved airport security program for foreign air carrier crew members. The final rule uses the broader term ''crewmember'' rather than ''flightcrew member'' as proposed in the SNPRM. In accordance with present FAA policy on ramp movement, however, the alternate arrangement would be limited to foreign flightcrew members (i.e., captain, second-in-command, flight engineer, or company check pilot) in the immediate vicinity of the aircraft to which they are assigned. The FAA is willing to consider the merits of including cabin crew and expanding the scope of ramp movement for foreign air carrier crew members on a case-by-case basis. Any alternate arrangements should be developed with and coordinated through the airport operator.

Responding to the concerns raised by ATA over the proposed authority to permit alternate arrangements for foreign crew members, the FAA has determined that it is reasonable from a security standpoint, and consistent with international practices, to permit limited access (around the assigned aircraft). Failure to provide alternate procedures for foreign air carrier crews could result in the adoption of additional requirements for investigations by foreign countries for U.S. air carrier personnel. There are significant operational restrictions associated with using the alternate arrangement that outweigh any associated financial advantages that may accrue to a foreign air carrier. In addition, there is a very low probability of detecting disqualifying convictions for a foreign national based outside the U.S. through an investigation of FBI records because those records normally include only arrests and convictions occurring in the U.S.

This rule does not specifically allow for the acceptance of the Transport Canada Airside Restricted Area Pass as meeting the rule's requirement. However, the required access investigation is more easily

accomplished for Canadian flightcrew members as a result of that country's program. The approach of the Canadian system, or similar systems in use by other countries, could result in the facilitation of using documentary evidence of employment verification.

The FAA agrees that the Act limits employment investigations to the extent allowable by the law in the foreign country. However, if the employment history verification or other aspects of the access investigation could not be completed as a result of another country's law, this would trigger a need to conduct the criminal history records check.

The problem of temporary employees is not specific or limited to foreign carriers. This rule would apply to any individual applying for unescorted access privileges. Considering the short period of time it takes to perform the employment history verification portion of the access investigation (which would authorize most individuals for unescorted access authority), the FAA contends this is not an unreasonable requirement; moreover, if the assignment is of short duration, escorting may be the simplest solution.

Transfer of Privilege

Two commenters believe that an individual who has been continuously employed by an air carrier, airport operator, or non-air-carrier tenant should be authorized unescorted access without having to be continuously employed in a position requiring unescorted access. Another commenter recommends that the FAA implement a uniform process for accepting transfers of individuals, so that there will be nationwide consistency in applying this provision. ATA expresses concern that the authority to grant unescorted access privileges to an individual transferring from one air carrier to another should be the exclusive responsibility of the air carrier. AACI and AAAE also question whether individuals transferring their authority for unescorted access must receive SIDA training at the new location.

*FAA Response:* This final rule adopts the proposal included in the SNPRM that provides an exception to the access investigation requirements for individuals who have already been subject to one. However, this rule retains the requirement that an individual transferring unescorted access privileges must have been continuously employed in a position requiring unescorted access since first being authorized unescorted SIDA access. The requirement to be continuously authorized should not present a burden for companies transferring individuals in positions within a company.

The rule does not attempt to establish uniform procedures for accepting transfers; rather, the rule sets the minimum requirement for continuous employment in a position with unescorted access privileges. The FAA expects the airport operator and the air carrier to cooperate in determining the process for an individual transferring from one carrier to another.

This rule does not affect the regulatory requirement for SIDA training. Under § 107.25 and associated FAA policy, individuals who have been subject to SIDA training who subsequently transfer their unescorted access authority must receive site-specific SIDA training at the new airport.

Individuals Subject To Investigation By Customs

One commenter suggests that the FAA coordinate with the U.S. Customs Service on its pending access rule for Customs Service security areas of an airport. The commenter's concerns focus on the effect on operations, costs, and possible duplication of the two rules.

*FAA Response:* This rule permits an airport operator to accept the background checks performed by the U.S. Customs Service to meet the FAA's access investigation requirement. Accepting the background investigation by Customs avoids a redundant check, while providing an equivalent or higher level of security for individuals with unescorted access. Because the Customs check is more extensive (it includes misdemeanor theft convictions) than that contained in this final rule, failure to obtain access authority to the Customs area would not preclude an individual from obtaining unescorted access to the SIDA, but would require the individual to be subjected to an access investigation under this rule.

*Section 107.31(f)—Investigations by Air Carriers and Airport Tenants*

Eight commenters address issues concerning the airport operator's acceptance of air carrier employment investigations and non-air carrier tenants' employment history verifications.

ATA notes that in the SNPRM preamble an airport operator is given the latitude to expand the scope of the employment history verification to cover areas beyond that required under the proposal. ATA urges the FAA to limit an airport operator's authority to impose additional verification requirements on air carriers. It recommends that the final rule clearly state that the air carrier is exclusively responsible only for fulfilling the employment investigation requirements of § 108.33.

ATA and RAA express concern that the SNPRM preamble explanation of § 107.31(F) allows an airport operator discretion to accept certification from an air carrier. These commenters recommend that the process be mandatory thus requiring the airport operator to accept their checks. The carriers have concerns that airport operators may require employment investigations beyond that necessary to meet the regulatory requirement.

One commenter states that an airport operator should be able to rely on certification by any tenant employer for the employment verification. Another commenter believes that the authority to certify employees should extend to part 129 carriers who operate in accordance with an exclusive area agreement and to indirect air carriers subject to part 109.

Three commenters oppose the requirement that the airport operator be responsible for the criminal history records check of all airport tenants other than U.S. air carriers and two commenters support this requirement. One commenter argues that the results of any criminal investigation would be most beneficial to the direct employer, as would information concerning arrests with no disposition. One commenter opposes any delegation to air carriers of the responsibility for criminal history records checks of their contractors because many of these contractors serve more than one air carrier. According to this commenter, conducting criminal history records checks on contractors should be the responsibility of the airport operator.

*FAA Response:* This final rule adopts the procedures proposed in the SNPRM for accepting air carrier access investigations and non-air-carrier tenant employment history verifications. Regarding the expansion of the employment history verification requirements, this rule establishes the guidelines for an acceptable verification. Each airport operator will specify these requirements in its security program subject to FAA approval. The FAA will limit approval to the employment history verification requirements outlined in this rule.

Under § 108.33, air carriers perform the access investigation for their employees. Therefore, it is logical that an airport operator would accept the air carrier's investigation without placing any additional requirements on the carrier. An airport operator's receipt of

the air carrier's certification satisfies its regulatory obligation. The airport operator may accept a written statement that the employment history verification and, where appropriate, the criminal history records check were performed as part of the process of an air carrier issuing identification credentials to its employees. If a specific air carrier employee or its contractor employee is receiving airport-issued identification, the airport operator must receive certification for each employee prior to issuing an identification credential. The certification should include a statement that the investigation was conducted in accordance with § 108.33 and provide the name(s) of the individuals requiring the unescorted access authority credential. However, the air carrier should retain the specific documentation supporting the access investigation.

The rule also includes a provision permitting an airport operator to accept written certification from airport tenants that they have reviewed the applicant's 10-year employment history and verified the most recent 5 years of that history. Again, the airport tenant should retain the specific documentation supporting this certification. Pursuant to the Act, only airport operators and air carriers can request a criminal history records check, although the costs of such checks will normally be borne by the employer. Thus, the airport operator must process criminal history records checks for all airport tenants other than U.S. air carriers. However, the airport operator is responsible only for the unescorted access privilege determination. Employment-related decisions such as hiring and firing, and an individual's status while a criminal history records check is pending, rest with the airport tenant.

For purposes of this rule, non-air-carrier tenants include airline food service companies, fixed base operators, foreign air carriers, and indirect air carriers subject to part 109 whose employees receive airport identification.

*Section 107.31(g)—Appointing Contact*

Six commenters respond to the issue of the airport operator appointing a person who will be responsible for reviewing the results of the employment investigation, determining an individual's eligibility for unescorted access and serving as the liaison if the individual disputes the results of a criminal check. As proposed in the SNPRM, the appointed person could delegate the day-to-day duties, but would serve as the FAA's point of contact with the airport for purposes of monitoring compliance with the employment investigation requirement. In the SNPRM, the FAA also solicited comments on whether it should require the contact to be the airport security coordinator (ASC). Five commenters acknowledge that the ASC would be the contact, but believe the FAA should not require or specify the position.

*FAA Response:* This final rule requires the airport operator to designate the ASC required under § 107.29 as the contact for access investigations. The ASC can delegate the duties while continuing to serve as the FAA's point of contact with the airport for purposes of monitoring compliance with this rule. This is consistent with the requirements of § 107.29 that the ASC serve as the airport operator's primary contact for security-related activities and communications with the FAA.

The ASC, or designee, is responsible for reviewing the results of the access investigation and determining an individual's eligibility for unescorted access privileges. The ASC also serves as the liaison when the individual disputes the results of the criminal history records check that revealed information that would disqualify the person from unescorted access.

*Section 107.31(h)—Individual Notification*

The FAA received no comments on this section.

Note: An individual covered by this rule must be notified of the need for a criminal history records check prior to commencing the check. Because the FAA will serve as the entity to process the criminal history records check required by this rule, this section of the final rule is modified from that proposed in the SNPRM by removing the language related to designating an outside entity.

*Section 107.31(i)—Fingerprint Processing*

The Act provides the FAA Administrator, in consultation with the Attorney General, the authority to designate persons to obtain and transmit fingerprints, and receive the results of a criminal history records check. In the SNPRM, the FAA proposed allowing airport operators and air carriers to directly contact the FBI or use an outside entity to request and process the criminal history records checks. The Department of Justice has agreed that airport operators and air carriers may access the criminal records system. The FBI indicates concerns about the FAA's SNPRM proposal to have multiple entities request the checks. The FBI recommends that the FAA serve as the central processor, suggesting the use of a system similar to that of the Nuclear Regulatory Commission (NRC). The NRC serves as the processor of FBI criminal history records checks for the nuclear industry.

Nine comments address the issue of having a centralized processor or ''clearing house'' batch and process the FBI criminal history records check requests. Many of the commenters note that the proposed language in the SNPRM would result in far fewer criminal history checks being conducted (compared to the NPRM) and question whether a non-governmental clearing house is feasible for so few requests. As an alternative, they recommend that the FAA serve as the processor.

Three commenters focus on the related issue of screening criminal history records check results. RAA supports the concept in the SNPRM that allows the airport operator and air carriers to review an individual's complete record. Two commenters state that a complete FBI record should not be sent to the airport operator or air carrier; rather, the records should be screened in some manner to determine whether a disqualifying conviction occurred and only that information provided. These commenters believe there is a significant privacy issue involved in releasing an entire record. NATA believes that the FAA should check the records and report any disqualifying convictions to the airport operator. AOPA suggests developing a reply form for the airport operator to submit along with the criminal history records check card. AOPA recommends that the FBI could use this form to return a response to the airport of ''qualified or disqualified'' for unescorted access privileges. AOPA also states that because the FAA is proposing to mandate these criminal checks, it must take an active role in protecting the rights of individuals affected by this rule and institute strict procedures to protect sensitive personal information.

Seven commenters express concerns over the authority needed by airport operators and air carriers to gain access to the FBI's criminal history record database. Another commenter suggests that the FAA obtain access authority to the National Crime Information Center (NCIC) automated database to allow for a ''name check'' of individuals applying for unescorted access authority.

*FAA Response:* The FAA has consulted with the Attorney General, as required by the Act, and has obtained the Department of Justice's concurrence in the following procedures. The FAA is following the recommendations made by the commenters, including the FBI, and will serve as the central processor for the criminal history records check

requests submitted to the FAA by airport operators and air carriers. The FAA will serve as the clearinghouse, in a manner similar to the NRC and will ensure fingerprint cards are forwarded to the FBI in a timely and cost effective manner. A $24.00 fee will enable the FAA to recover its cost of processing and obtaining the FBI records. The FAA will charge the same $24.00 user fee currently levied by FBI on the banking, securities, commodities futures trading industries and the NRC. The fee is subject to increase without prior notice upon determination by the FBI. Parties subject to this rule will be notified of fee increases by amendments to this rule in the future.

Upon completion of the FBI records check, the complete FBI record will be forwarded to the requesting entity. The regulation places specific limits on the use of the information contained in the criminal history records check. This issue is addressed in the preamble discussion of § 107.31(m).

The FAA has researched the possibility of using the NCIC system to allow airport operators and air carriers an alternative method for obtaining criminal history information for individuals applying for the privilege of unescorted access. As stated in the Notice of Public Meetings, and as discussed at the public meetings held on the initial notice, under published policy established by the NCIC's Advisory Policy Board, the NCIC is not available to check the records of applicants for employment in aviation related industries. In addition, checking an individual's name and other identifying information does not provide the same level of positive identification that derives from the use of a check based on an individual's fingerprints.

This final rule includes procedures for collecting fingerprints and requires that one set of legible fingerprints be taken on a card acceptable to the FBI (i.e., Federal Document 258). The airport operator may choose to have the airport law enforcement officers take the fingerprints. The FAA also requires verifying the individual's identity when taking his/her fingerprints. The individual must present two forms of identification, one of which must bear the individual's photograph. A current driver's license, military identification, or passport are examples of acceptable photographic identification. In addition, the fingerprint cards must be handled and shipped in a manner that protects the privacy of the individual.

Airport operators will send the fingerprint cards to the Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591 (Attn: ACO–310, Access Processing). A corporate check, certified check, cashier's check or money order made payable to the ''U.S. FAA'' for $24.00 per card must accompany the request.

The FAA will verify that the information required on the fingerprint cards is complete and forward the cards for processing. After the FBI completes the search of its index system, the FAA will receive the results and, in turn, will forward the results to the airport operator. Under this system, the airport operator will receive complete results of the check.

*Section 107.31(j)—Making the Access Determination*

Six commenters raise concerns over the airport operator or the air carrier being responsible for resolving any arrests for disqualifying crimes that have no disposition listed on the FBI criminal history records check result. ATA and RAA also suggest that the individual seeking employment should be responsible for furnishing any required disposition documentation.

*FAA Response:* This final rule requires the airport operator to ascertain the disposition of arrests for any of the enumerated offenses when no disposition has been recorded in the FBI's records, e.g., the case is pending or the FBI has no record. This task would be conducted with the affected individual and the jurisdiction where the arrest took place in order to determine whether a disposition has been recorded in that jurisdiction but not forwarded to the FBI. While the investigation will require assistance from the individual, it is the responsibility of the airport operator or the air carrier to complete the investigation. In determining whether to grant unescorted access to an individual with an arrest for one of the disqualifying crimes with no disposition, the airport operator should weigh all relevant information available on the individual, including the results of the access investigation.

*Section 107.31(k)—Availability and Correction of FBI Records and Notification of Disqualification*

Two commenters state that allowing applicants to challenge the accuracy of the FBI record will require involvement by the airport operator in a possibly lengthy and expensive process.

*FAA Response:* The Act requires that individuals have the right to challenge the accuracy of their criminal history record. While such a challenge may be a time consuming process, the FAA has no discretion to eliminate this right. This rule does require the individual to notify the airport operator or its designee within 30 days of receipt of the record of his or her intent to correct any information believed to be inaccurate. Because the FBI maintains the records and has established procedures to address possible inaccuracies, it is appropriate to forward a copy of any requests for correction to the FBI. However, the FBI prefers that the actual request be made by the individual directly to the agency (i.e., federal, state or local jurisdiction) that supplied the questioned criminal history information to the FBI.

When taking the individual's fingerprints, the airport operator must notify the individual that he or she will be provided, upon written request, a copy of the results of the FBI criminal history records check prior to rendering the access decision.

If the airport operator is not notified by the individual within the 30-day period that he or she intends to dispute the results, the airport operator may make the final access decision. The airport operator is neither obligated to provide the individual with an escort before the correction (if any) is made, nor is the employer obligated to hire the applicant after the record is corrected. However, after being informed that the disqualifying information has been corrected, the airport operator would have to obtain a copy of the revised FBI record before the individual could be authorized for unescorted access.

If an individual is disqualified for unescorted access privileges based on the findings of the criminal history record check, the individual must be notified that such a determination has been made.

*Section 107.31(l)—Individual Accountability*

Two commenters address the issue requiring an individual with unescorted access authority to report any disqualifying convictions occurring after the completion of the employment investigation. One commenter concurs with the decision not to require a recurrent investigation and another states that the SNPRM did not adequately address the procedures that would apply in these cases.

*FAA Response:* This final rule adopts the ''self-disclosure'' provision included in the SNPRM. Any person holding unescorted access authority who is convicted of any of the disqualifying crimes after January 31, 1995, must surrender the identification media to the issuer within 24 hours of learning of the conviction. This final rule does not provide additional guidance on this

requirement. However, the FAA expects that the regulated parties will develop local procedures to implement this provision. In such cases, the employer is likely to be aware of the circumstances and take immediate action to revoke the access authority.

Any individual failing to report a disqualifying conviction or to surrender his or her SIDA identification credential issued under this section is subject to possible FAA enforcement action, including civil penalty liability.

*Section 107.31(m)—Limits on Dissemination of Results*

The FAA received no comments on this section.

Note: As required by the Act, this rule also includes limits on the dissemination of the criminal history information. The FAA limits distribution of such information to: (1) the individual to whom the record pertains or someone authorized by that person; (2) the airport operator; and (3) the individuals designated by the Administrator, e.g., FAA special agents.

*Section 107.31(n)—Recordkeeping*

Six commenters address the requirements for maintaining records. ATA requests that the final rule clearly require maintaining only that information necessary to satisfy the regulation requirements. ATA is concerned that FAA inspectors may interpret the record provision as providing discretion to require the maintenance of information beyond that which is necessary to meet the requirements set forth in the SNPRM.

Two airport operators express concerns over the administrative burden of maintaining all employment history records of non-air-carrier tenants. One commenter agrees that maintaining the criminal history records checks is the airport operator's responsibility and that this should not be a burden to airports because they already keep confidential information.

*FAA Response:* The FAA has determined that the airport or air carrier shall maintain a written record for individuals granted unescorted access authority that includes specific information on the employment history verification and the results of an FBI criminal history records check, if conducted. The burden on airport operators to maintain records for tenants already exists because airport operators maintain records for individuals who are currently issued identification media. This rule standardizes the information to be maintained to include the results of the FBI criminal history records check, where applicable. The airport tenant can continue to maintain the more comprehensive record and associated paperwork of the employment history verification.

The FAA has modified this section from that proposed in the SNPRM to clarify that an airport operator need not maintain comprehensive records and documentation for air carrier employees. As discussed under § 107.31(f), the record can be a certification from the air carrier that the access investigation was performed. The airport operator would have no further recordkeeping requirements related to air carrier employees. Furthermore, in order to permit the destruction of FBI criminal history records check results and minimize storage problems for airport operators and air carriers, the recordkeeping requirements allow for the retention of only a certification that the check was completed and revealed no disqualifying convictions. Another minor editorial change in this regard was the deletion of the reference to airport tenants providing certification of criminal history records check results since these parties are not authorized to request such checks.

This final rule contains two recordkeeping requirements: (1) A record indicating that the applicant's 10-year employment history has been reviewed and the most recent 5-year employment history verified, and (2) a copy of the results of the criminal history record check received from the FBI or certification of same, where appropriate. The airport operator can accept written certification from airport tenants that the employment history was reviewed and the verification was performed. However, the airport tenant should maintain a record of calls made, plus a record of correspondence or any other documents received. The tenant must make this information available to the airport operator when requested by the FAA for inspection purposes.

For individuals subject to a criminal history records check, the records received from the FBI must be maintained in a manner that prevents the unauthorized dissemination of its contents.

The airport operator must maintain a written record until 180 days after termination of the individual's authority.

*Section 108.33—Employment Verification*

This rule authorizes air carriers to perform the access investigations for its employees and contractors in a manner similar to that required under § 107.31. The air carrier may provide a general certification to an airport operator under § 107.31(f) that the access investigation was performed as part of issuing identification credentials to its employees. When an individual air carrier employee or its contractor employee is investigated by the carrier for receipt of airport-issued identification media, the air carrier must provide the airport operator with certification that the investigation was performed for each employee.

The requirements for an air carrier performing the access investigation are identical to those required of an airport operator.

Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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. With respect to this rule, the FAA has determined that it: (1) is ''a significant regulatory action'' as defined in section 3 (f)(4) of the Executive Order; (2) is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Since the rule is not significant under section 3 (f)(4) of the Executive Order, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule which is presented in the following paragraphs.

The expected costs of the rule consist of two parts: (1) the cost of enhancing the employment history verification process; and (2) the cost of conducting a criminal history records check on applicants whose employment verification triggers it. Employers may avoid the latter cost by simply choosing to end the employment process for the individual in question.

First-year costs for the industry will range from $0.5 to $1.4 million. Airports, air carriers, and other airport tenants will incur these costs. The cost of the rule comes from the time necessary to complete an estimated 64,000 employment history verifications by non-air-carrier airport tenants and from an estimated 970 to 1,940 criminal

history records checks by all airport and air carrier employers. The FAA estimates that, in 1995, 194,000 employees will apply for unescorted SIDA access privilege. Between 1995 and 2004, the total cost of the new requirements will range from $6.2 to $16.2 million. The discounted cost ranges from $4.3 to $11.1 million.

Because aviation security requires an intricate set of interlocking measures, the benefits ascribed to this final rule derive from strengthening the U.S. civil aviation security network. By enhancing the civil aviation security network, this final rule decreases the possibility that a deadly and costly terrorist or criminal act will occur. This final rule assures a greater measure of safety through tighter screening of individuals applying for jobs requiring unescorted secure area access. Specifically, this final rule reduces the civil aviation security risk by further assuring that persons who have committed certain crimes do not have access to airport secure areas.

The FAA has determined that the final rule provides sufficient additional security to make it cost beneficial.

The rule will have a negligible impact on international trade. Also, the proposed regulatory action will not have a significant economic impact on a substantial number of small entities.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, nonprofit organizations, and small cities. The RFA requires regulatory agencies to review rules which may have ''a significant economic impact on a substantial number of small entities.'' A substantial number of small entities, defined by FAA Order 2100.14A—''Regulatory Flexibility Criteria and Guidance,'' is more than one-third, but not less than eleven, of the small entities subject to the existing rule. To determine if the rule will impose a significant cost impact on these small entities, the annualized cost imposed on them must not exceed the annualized cost threshold established in FAA Order 2100.14A.

Small entities potentially affected by the rule are small airports, air carriers, fixed-base operators, and catering companies. However, many of the requirements of the rule are already standard procedures for some of these entities; and the cost of a criminal history records check is minimal because so few employers are expected to utilize it for their applicants. The FAA estimates the average cost of upgrading an employee verification is $15.00. This estimate incorporates the cost of a criminal history records checks.

Aircraft Repair Facilities: FAA Order 2100.14A defines small aircraft repair facilities as those with 200 employees or less. The FAA has estimated the cost threshold for small operators to be $4,130 in 1992 dollars. To exceed this threshold, a facility would have to hire 275 employees ($4,130/$15.00) per year. This means that the facility would have to regularly employ 786 persons (assuming a 35 percent turnover rate: 275/.35). If a firm employed that many people, it would be a small entity since it is over the size threshold of 200 employees.

Caterers: The FAA evaluates small caterers as aircraft repair facilities since FAA Order 2100.14A does not define a threshold for caterers. This order defines the criteria as 200 employees or less for the size threshold and $4,130 for the cost threshold. Hence, like the aircraft repair facilities, in order to exceed the cost threshold, caterers would have to employ 786 persons, which would exceed the size threshold of 200 employees.

In conclusion, the rule will not impose a significant impact on a substantial number of small entities.

*Federalism Implications*

This rule does not have a substantial direct effect 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. Most airports covered by the rule are public entities (state and local governments). However, relatively few of the covered individuals are actually employed by the airport operator, and most of the costs for the required investigations would be borne by the airport tenants and air carriers. Thus, the overall impact is not substantial within the meaning of Executive Order 12612. Therefore, in accordance with that Executive Order, it is determined that this rule would not have sufficient Federal implications to warrant the preparation of a Federalism Assessment.

*International Civil Aviation Organization and Joint Aviation Regulations*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Authority Standards and Recommended Practices to the maximum extent practicable. The FAA is not aware of any differences that this final rule will present.

*Paperwork Reduction Act*

Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection burden for this rule under OMB Approval Number 2120–0564. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590, (202) 366–4375 or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, Room 3228, Washington D.C., 20503, (202) 395–7340.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this rule is a significant regulatory action under Executive Order 12866. This rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act but is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The regulatory evaluation for this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, 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 Parts 107 and 108

Air carriers, Air Transportation, Airlines, Airplanes operator security, Aviation safety, Security measures, Transportation, Weapons.

The Rule Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 107 and 108 of the Federal Aviation Regulations (14 CFR parts 107 and 108) as follows:

## PART 107—AIRPORT SECURITY

1. The authority citation for Part 107 is revised to read as follows:

Authority: 49 U.S.C. 106(g); 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

2. In part 107, § 107.1 paragraphs (b)(3) through (b)(5) are redesignated as paragraphs (b)(4) through (b)(6), and

new paragraph (b)(3) is added to read as follows:

**§ 107.1 Applicability and Definitions.**

* * * * *

(b) * * *

(3) Escort means to accompany or supervise an individual who does not have unescorted access authority to areas restricted for security purposes, as identified in the airport security program, in a manner sufficient to take action should the individual engage in activities other than those for which the escorted access is granted. The responsive actions can be taken by the escort or other authorized individual.

* * * * *

3. Part 107 is amended by adding a new § 107.31 to read as follows:

**§ 107.31 Access Investigation**

(a) On or after January 31, 1996, this section applies to all individuals seeking authorization for, or seeking authority to authorize others to have, unescorted access privileges to the security identification display area (SIDA) that is identified in the airport security program as defined by § 107.25.

(b) Except as provided in paragraph (e) of this section, each airport operator must ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the area identified in paragraph (a) of this section unless:

(1) The individual has satisfactorily undergone a review covering the past 10 years of employment history and verification of the 5 years preceding the date the access investigation is initiated as provided in paragraph (c) of this section; and

(2) The results of the access investigation do not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of a crime involving any of the following crimes enumerated in paragraphs (b)(2)(i) through (xxv) of this section. Where specific citations are listed, both the current citation and the citation that applied before the statutes are recodified in 1994 are listed.

(i) Forgery of certificates, false making of aircraft, and other aircraft registration violations, 49 U.S.C. 46306 [formerly 49 U.S.C. App. 1472 (b)];

(ii) Interference with air navigation, 49 U.S.C. 46308, [formerly 49 U.S.C. App 1472 (c)];

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312, [formerly 49 U.S.C. App 1472(b)(2)];

(iv) Aircraft piracy, 49 U.S.C. 46502, [formerly 49 U.S.C. App 1472(i);

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504, [formerly 49 U.S.C. App 1472(j)];

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506, [formerly 49 U.S.C. App 1472(k)];

(vii) Carrying a weapon or explosive aboard an aircraft, 49 U.S.C. 46505 [formerly 49 U.S.C. App 1472(l)];

(viii) Conveying false information and threats, 49 U.S.C. 49 46507 [formerly 49 U.S.C. App 1472 (m)];

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b), [formerly 49 U.S.C. App 1472(n)];

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315, [formerly 49 U.S.C. App 1472(q)];

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314, [formerly 49 U.S.C. App 1472(r)];

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(c) The access investigation must include the following steps:

(1) The individual must complete an application form that includes:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 months, during the previous 10-year period;

(iii) Notification that the individual will be subject to an employment history verification and possibly a criminal history records check; and

(iv) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The identity of the individual must be verified through the presentation of two forms of identification, one of which must bear the individual's photograph.

(3) The information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section must be verified in writing, by documentation, by telephone, or in person.

(4) If one or more of the following conditions exists, the access investigation must not be considered complete unless it includes a check of the individual's fingerprint-based criminal history record maintained by the Federal Bureau of Investigation (FBI). The airport operator may request a check of the individual's fingerprint-based criminal history record only if one or more of the following conditions exists:

(i) The individual cannot satisfactorily account for a period of unemployment of 12 months or more during the previous 10-year period;

(ii) The individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by paragraph (c)(1)(ii) of this section and that obtained through the 5-year verification process; or

(iii) Information becomes available to the airport operator during the access investigation indicating a possible conviction for one of the disqualifying crimes.

(d) An airport operator may permit an individual to be under escort as defined in § 107.1 in accordance with the airport security program to the areas identified in paragraph (a) of this section.

(e) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access to the areas identified in paragraph (a) of this section:

(1) Employees of the Federal government or a state or local government (including law enforcement officers) who, as a condition of employment, have been subject to an employment investigation;

(2) Crew members of foreign air carriers covered by an alternate security arrangement in the approved airport operator security program;

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport tenant or air carrier; and

(4) An individual who has access authority to the U.S. Customs Service security area of the U.S. airport.

(f) An airport operator will be deemed to be in compliance with its obligations under paragraphs (b)(1) and (b)(2) of this section, as applicable, when it accepts certification from:

(1) An air carrier subject to § 108.33 of this chapter that the air carrier has complied with § 108.33 (a)(1) and (a)(2) for its employees and contractors; and

(2) An airport tenant other than a U.S. air carrier that the tenant has complied with paragraph (b)(1) of this section for its employees.

(g) The airport operator must designate the airport security coordinator to be responsible for:

(1) Reviewing and controlling the results of the access investigation; and

(2) Serving as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

(h) Prior to commencing the criminal history records check, the airport operator must notify the affected individuals.

(i) The airport operator must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI for this purpose;

(2) The fingerprints must be obtained from the individual under direct observation by the airport operator;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification media, one of which must bear his or her photograph;

(4) The fingerprint card must be forwarded to Federal Aviation Administration, 800 Independence Ave., S.W., Washington, D.C. 20591 (ATTN: ACO–310, Access Processing); and

(5) Fees for the processing of the criminal checks are due upon application. Airport operators shall submit payment through corporate check, cashier's check or money order made payable to ''U.S. FAA,'' at the rate of $24.00 for each fingerprint card. Combined payment for multiple applications is acceptable.

(j) In conducting the criminal history records check required by this section, the airport operator must ascertain information on arrests for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

(k) The airport operator must:

(1) At the time the fingerprints are taken, notify the individual that a copy of any criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the FBI criminal history record discloses information that would disqualify him or her from unescorted access authorization and provide each affected individual with a copy of his or her FBI record if it has been requested. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the FBI criminal history record discloses disqualifying information, the individual must notify the airport operator, in writing, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 days, the airport operator may make a final access decision.

(ii) Upon notification by the individual that a record has been corrected, the airport operator must obtain a copy of the revised FBI record prior to making a final access decision.

(3) Notify an individual that a final decision has been made to grant or deny authorization for unescorted access.

(l) Any individual authorized to have unescorted access privilege to the areas identified in paragraph (a) of this section who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

(m) Criminal history record information provided by the FBI must be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The airport operator; or

(3) Others designated by the Administrator.

(n) The airport must maintain a written record for each individual until 180 days after the termination of the individual's authority for unescorted access. The records for each individual subject to:

(1) The access investigation must include: the application, the employment verification information obtained by the employer, the names of those from whom the employment verification information was obtained, the date the contact was made, or certification of same from air carriers or airport tenants, and any other information as required by the Assistant Administrator for Civil Aviation Security, and

(2) A criminal history records check must include the results of the records check, or a certification by the airport operator or air carrier that the check was completed and did not uncover a disqualifying conviction. These records must be maintained in a manner that protects the confidentiality of the employee, which is acceptable to the Assistant Administrator for Civil Aviation Security.

## PART 108—AIRPLANE OPERATOR SECURITY

4. The authority citation for Part 108 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40102, 40113, 40119, 44701–44713, 44901–44915, 44931–44937, 46105.

5. Part 108 is amended by adding a new § 108.33 to read as follows:

### § 108.33 Access investigation.

(a) On or after January 31, 1996 for each employee or contractor employee covered under a certification made to an airport operator pursuant to § 107.31(f) of this chapter, the certificate holder must ensure that:

(1) The individual has satisfactorily undergone an employment history review covering the past 10 years and verification of the 5 years preceding the date the access investigation is initiated as provided in paragraph (b) of this section; and

(2) The results of the access investigation do not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of a crime involving any of the following crimes enumerated in paragraphs (b)(2)(i) through (xxv) of this section. Where specific citations are listed, both the current citation and the citation that applied before the statutes are recodified in 1994 are listed.

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306 [formerly 49 U.S.C. App. 1472(b)];

(ii) Interference with air navigation, 49 U.S.C. 46308, [formerly 49 U.S.C. App 1472(c)];

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312, [formerly 49 U.S.C. App 1472(b)(2)];

(iv) Aircraft piracy, 49 U.S.C. 46502, [formerly 49 U.S.C. App 1472(i)];

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504, [formerly 49 U.S.C. App 1472(j)];

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C.

46506, [formerly 49 U.S.C. App 1472(k)];

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505 [formerly 49 U.S.C. App 1472(l)];

(viii) Conveying false information and threats, 49 U.S.C. 49 46507 [formerly 49 U.S.C. App 1472(m)];

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b), [formerly 49 U.S.C. App 1472(n)];

(x) Lighting violations in connection with transportation of controlled substances, 49 U.S.C. 46315, [formerly 49 U.S.C. App 1472(q)];

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314, [formerly 49 U.S.C. App 1472(r)];

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(b) The access investigation must include the following steps:

(1) The individual must complete an application form that includes:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 months, during the previous 10-year period;

(iii) Notification that the individual will be subject to an employment history verification and possibly a criminal history records check; and

(iv) Any convictions during the previous 10-year period for the crimes listed in paragraph (a)(2) of this section.

(2) The identity of the individual must be verified through the presentation of two forms of identification, one of which must bear the individual's photograph.

(3) The information on the most recent 5 years of employment history required under paragraph (b)(1)(ii) of this section must be verified in writing, by documentation, by telephone, or in person.

(4) If one or more of the following conditions exists, the access investigation must not be considered complete unless it includes a check of the individual's fingerprint-based criminal history record maintained by the Federal Bureau of Investigation (FBI). The airport operator may request a check of the individual's fingerprint-based criminal history record only if one or more of the following conditions exists:

(i) The individual cannot satisfactorily account for a period of unemployment of 12 months or more during the previous 10-year period;

(ii) The individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by paragraph (b)(1)(ii) of this section and that which is obtained through the 5-year verification process; or

(iii) Information becomes available to the certificate holder during the access investigation indicating a possible conviction for one of the disqualifying crimes.

(c) The certificate holder must designate an individual to be responsible for:

(1) Reviewing and controlling the results of the access investigation; and

(2) Serving as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

(d) Prior to commencing the criminal history records check, the certificate holder must notify the affected individuals.

(e) The certificate holder must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI;

(2) The fingerprints must be obtained from the individual under direct observation by the certificate holder;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification media, one of which must bear his or her photograph; and

(4) The fingerprint card must be forwarded to Federal Aviation Administration, 800 Independence Ave, S.W., Washington, D.C. 20591 (ATTN: ACO–310, Access Processing) and

(5) Fees for the processing of the criminal checks are due upon application. Air carriers shall submit payment through corporate check, cashier's check or money order made payable to ''U.S. FAA,'' at the rate of $24.00 for each fingerprint card. Combined payment for multiple applications is acceptable.

(f) In conducting the criminal history records check required by this section, the certificate holder must investigate arrest information for the crimes listed in paragraph (a)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

(g) The certificate holder must:

(1) At the time the fingerprints are taken, notify the individual that a copy of the criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the FBI criminal history record discloses information that would disqualify him or her from unescorted access authorization and provide each affected individual with a copy of his or her FBI record. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the criminal history record received from the FBI discloses disqualifying information, the individual must notify the certificate holder, in writing, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 days, the certificate holder may make a final access decision.

(ii) Upon notification by the individual that the record has been corrected, the certificate holder must obtain a copy of the revised record from the FBI prior to making a final access decision.

(3) Notify an individual that a final decision has been made to grant or deny authority for unescorted access.

(h) Any individual authorized to have unescorted access privilege to areas identified in § 107.31(a) of this chapter, who is subsequently convicted of any of the crimes listed in paragraph (a)(2) of this section, must report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

(i) Criminal history record information provided by the FBI must be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The certificate holder; or

(3) Others designated by the Administrator.

(j) The certificate holder must maintain a written record that the investigation was conducted for the individual until 180 days after the termination of the individual's authority for unescorted access. The record for individuals subject to:

(1) The access investigation must include the application, the employment verification information obtained by the employer, the names of those from whom the employment verification information was obtained, the date the contact was made, and any other information as required by the Assistant Administrator for Civil Aviation Security, and

(2) A criminal history records check must include the results of the records check or certification by the air carrier that a check was completed and did not uncover a disqualifying conviction. These records must be maintained in a manner that protects the confidentiality of the employee, which is acceptable to the Assistant Administrator for Civil Aviation Security.

Issued in Washington, DC, on September 26, 1995.

David R. Hinson,

*Administrator.*

[FR Doc. 95–24546 Filed 9–28–95; 3:10 pm]

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federal register

Tuesday
October 3, 1995

# Part VI

# The President

## Executive Order 12974—Continuance of Certain Federal Advisory Committees

Federal Register
Vol. 60, No. 191
Tuesday, October 3, 1995

# Presidential Documents

Title 3—

The President

Executive Order 12974 of September 29, 1995

## Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1997.

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior).

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor).

(c) National Partnership Council; Executive Order No. 12871 (Office of Personnel Management).

(d) President's Advisory Commission on Educational Excellence for Hispanic Americans; Executive Order No. 12900 (Department of Education).

(e) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order No. 12876 (Department of Education).

(f) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(g) President's Committee of Advisors on Science and Technology; Executive Order No. 12882, as amended (Office of Science and Technology Policy).

(h) President's Committee on the Arts and the Humanities; Executive Order No. 12367, as amended (National Endowment for the Arts).

(i) President's Committee on the International Labor Organization; Executive Order No. 12216, as amended (Department of Labor).

(j) President's Committee on Mental Retardation; Executive Order No. 11776, as amended (Department of Health and Human Services).

(k) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation).

(l) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services).

(m) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce).

(n) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

(o) Trade and Environment Policy Advisory Committee; Executive Order No. 12905 (Office of the United States Trade Representative).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

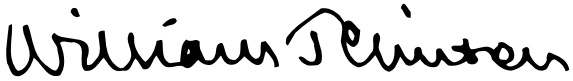
Sec. 3. The following Executive orders or sections thereof, which established committees that have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12878, as amended by Executive Order Nos. 12887 and 12912, establishing the Bipartisan Commission on Entitlement Reform; and

(b) That portion of section 2 of Executive Order No. 12844 that established the Federal Fleet Conversion Task Force.

Sec. 4. Executive Order No. 12869 is superseded.

Sec. 5. This order shall be effective September 30, 1995.



THE WHITE HOUSE,
*September 29, 1995.*

[FR Doc. 95–24754
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Federal Register

Vol. 60, No. 191

Tuesday, October 3, 1995

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## FEDERAL REGISTER PAGES AND DATES, OCTOBER

51321–51666.....2
51667–51876.....3

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Executive Orders:**
11145 (Continued by EO 12974).....51875
11183 (Continued by EO 12974).....51875
11287 (Continued by EO 12974).....51875
11776 (Continued by EO 12974).....51875
12131 (Continued by EO 12974).....51875
12196 (Continued by EO 12974).....51875
12216 (Continued by EO 12974).....51875
12345 (Continued by EO 12974).....51875
12367 (Continued by EO 12974).....51875
12382 (Continued by EO 12974).....51875
12844 (Revoked in part by EO 12974).....51876
12869 (Superseded by EO 12974).....51876
11871 (Continued by EO 12974).....51875
11876 (Continued by EO 12974).....51875
12878 (Revoked by EO 12974).....51876
12882 (Continued by EO 12974).....51875
12887 (See EO 12974).....51876
12900 (Continued by EO 12974).....51875
12901 (Amended by EO 12973).....51665
12905 (Continued by EO 12974).....51875
12912 (See EO 12974).....51876
12973.....51665
12974.....51875

**5 CFR**

2608.....51667
2612.....51667
2635.....51667
**Proposed Rules:**
251.....51371

**7 CFR**

400.....51321
810.....51667
982.....51668
**Proposed Rules:**
300.....51373
318.....51373
1280.....51737

**12 CFR**

229.....51669

**14 CFR**

39.....51321, 51703, 51705, 51707, 51709, 51713
61.....51850
63.....51850
65.....51850
97.....51715, 51717
107.....51854
108.....51850, 51854
121.....51850
135.....51850
**Proposed Rules:**
39.....51375, 51376
71.....51747

**17 CFR**

36.....51323

**19 CFR**

**Proposed Rules:**
201.....51748
207.....51748

**20 CFR**

702.....51346
703.....51346

**21 CFR**

522.....51718

**22 CFR**

92.....51719
**Proposed Rules:**
51.....51760

**24 CFR**

**Proposed Rules:**
882.....51658

**25 CFR**

164.....51723
165.....51723

**26 CFR**

301.....51724

**28 CFR**

2.....51348, 51349, 51350

**29 CFR**

4.....51725
1602.....51350
**Proposed Rules:**
1625.....51762

**32 CFR**

**Proposed Rules:**
321.....51764

**33 CFR**

117 .....51727, 51728, 51729, 51730, 51732
164.....51733

**40 CFR**

52.....51351, 51354
81.....51354, 51360
**Proposed Rules:**
51.....51378
52 .....51378, 51379, 51382
81.....51382
82.....51383
85.....51378
300.....51390, 51395
302.....51765
355.....51765

**43 CFR**

**Public Land Orders:**
7163.....51734

**44 CFR**

64.....51360

**47 CFR**

43.....51366
63.....51366

**48 CFR**

1871.....51368
**Proposed Rules:**
32.....51766
52.....51766

**50 CFR**

651.....51370
**Proposed Rules:**
17 .....51398, 51417, 51432, 51436, 51443
676.....51452
301.....51735