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Tuesday  
November 9, 1993

# Federal Register

**Briefings on How To Use the Federal Register**  
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Washington, DC, see announcement on the inside cover  
of this issue.



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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### NEW YORK, NY

- WHEN:** November 23, 9:00 am—12:00 pm
- WHERE:** National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY
- RESERVATIONS:** 1-800-347-1997

### WASHINGTON, DC

#### (two briefings)

- WHEN:** November 30 at 9:00 am and 1:30 pm
- WHERE:** Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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Law numbers and Federal Register finding aids is available  
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Executive Order 12878 of November 5, 1993

The President

## Bipartisan Commission on Entitlement Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to establish a Bipartisan Commission on Entitlement Reform, it is hereby ordered as follows:

**Section 1. Establishment.** (a) There is established the Bipartisan Commission on Entitlement Reform ("Commission"). The Commission shall comprise 30 members to be appointed by the President. Ten members shall be Senators, five each from the Democratic and Republican parties. Ten members shall be Members of the House of Representatives, five each from the Democratic and Republican parties. Ten members shall be individuals from either the public or private sector who have experience and expertise in the areas to be considered by the Commission.

(b) The President shall designate a Chairperson and Vice-Chairperson from among the members of the Commission.

**Sec. 2. Functions.** (a) The Commission shall recommend potential long-term budget savings measures involving (1) revisions to statutory entitlement and other mandatory programs; and (2) alternative tax reform proposals. The Commission shall report its recommendations respecting potential entitlement and other mandatory program savings and tax system revisions to the National Economic Council and to the Congressional leadership by May 1, 1994.

(b) The Commission shall decide by a three-fifths vote which recommendations to include in the report. At the request of any Commission member, the report will include that Commission member's dissenting views or opinions.

(c) The Commission may, for the purpose of carrying out its functions, hold such hearings and sit and act at such times and places, as the Commission may find advisable.

**Sec. 3. Administration.** (a) To the extent permitted by law, the heads of executive departments, agencies, and independent instrumentalities shall provide the Commission, upon request, with such information as it may require for the purposes of carrying out its functions.

(b) Upon request of the Chairperson of the Commission, the head of any Federal agency or instrumentality shall, to the extent possible and subject to the discretion of such head, (1) make any of the facilities and services of such agency or instrumentality available to the Commission; and (2) detail any of the personnel of such agency or instrumentality to the Commission, to assist the Commission in carrying out its duties.

(c) Members of the Commission shall serve without compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707) to the extent funds are available for such purposes.

(d) To the extent permitted by law and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Commission with administrative services, funds, facilities, staff, and other support services necessary for the performance of the Commission's functions. The Secretary of Health and Human Services shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.) ("Act"), except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

(e) The Commission shall adhere to the requirements set forth in the Act. All executive branch officials assigned duties by the Act shall comply with its requirements with respect to the Commission.

**Sec. 4. General Provision.** The Commission shall terminate 30 days after submitting its report.



THE WHITE HOUSE,  
November 5, 1993.

# Rules and Regulations

Federal Register

Vol. 58, No. 215

Tuesday, November 9, 1993

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

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

## OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 335 and 511

RIN 3206-AF09

### Promotion and Internal Placement

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations that authorize agencies to make time-limited promotions in the competitive service. This authority replaces existing temporary and term promotion authorities with a single time-limited promotion authority for up to 5 years, eliminates the need for agencies to enter into a written delegation agreement or seek OPM prior approval to make a time-limited promotion for more than 2 years, eliminates the requirement to make these promotions in 1-year increments, and requires the agency to notify the employee in writing of the conditions of the time-limited promotion.

**EFFECTIVE DATE:** December 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Leota Shelkey Edwards on 202-606-0960 (FAX 202-606-2329).

**SUPPLEMENTARY INFORMATION:** On October 15, 1992, OPM issued proposed regulations to authorize time-limited promotions for up to 5 years in the competitive service (57 FR 47279). We received written comments from eight agencies, two employee organizations, and two individuals. All but three supported the proposal.

Currently, 5 CFR part 335 permits agencies to make time-limited promotions in the competitive service under two separate authorities. Section 335.102 (f) permits an agency to promote an employee temporarily to meet a temporary need for up to 1 year

and to extend the promotion for no more than 1 additional year. Further extensions require OPM prior approval.

Section 335.102(g) permits agencies, after entering into a formal written agreement with OPM, to promote an employee for a limited term in excess of 2 years but not more than 4 years to complete a designated project or as part of a planned rotational system. The agency may request OPM approval for extension for a total of 5 years.

This final regulation replaces the temporary and term promotion authorities in § 335.102 (f) and (g) with a single authority for time-limited promotions of up to 5 years. Our purpose in doing so is to increase the usefulness of the time-limited promotion mechanism and to eliminate the overlap between these two similar authorities and the resulting confusion over their use. Following is a summary of the comments received.

#### a. New Time Limit

One commenter expressed concern that this regulation would allow for extended employment of individuals without the full range of employee benefits such as health benefits, leave, etc. However, this is not so. The employees covered by this regulation are those under career, career-conditional, status quo, indefinite, term, and overseas limited indefinite/term appointments—all of which provide the full range of employee benefits. An employee's time-limited promotion while serving under one of these appointment types has no effect on the employee's continuing eligibility for benefits.

One commenter suggested we retain the existing requirement that temporary promotions be made in 1-year increments, and another favored retaining OPM approval for extensions. We have not adopted either suggestion. While temporary promotions now are limited to 1-year periods, term promotions are not; and elimination of increments in the new authority was intended to avoid additional personnel actions when an agency knows at the outset that the need is limited, but will be for more than 1 year. Furthermore, an agency has the authority, if it wishes, to adopt internal implementing policies that limit use of the authority to shorter periods or 1-year increments, and to require prior approval of higher agency levels for extensions.

One commenter suggested we spell out the types of situations that warrant a promotion for 3–5 years to assure proper use. We have included appropriate uses for time-limited promotions in the regulation, but we have not specified the circumstances for particular time periods. Our intent is to provide agencies with the authority to cover legitimate management needs and the discretion to determine the situations that warrant a longer time period. If an agency wishes to restrict the authority further, it may do so.

The proposed regulation provided that an agency could make a time-limited promotion retroactively only with OPM's prior approval. Two commenters were confused over this provision, and another noted that it should not prevent an agency from correcting unwarranted or unjustified personnel actions. We agree and have dropped the OPM prior approval provision from the final regulation. Agencies could use this authority to effect retroactive temporary promotions consistent with the back pay law.

We wish to clarify several additional issues about the time limit. The 5-year limit applies to the total continuous time an employee is temporarily promoted without new competition. If an employee is promoted temporarily and later competes and is selected for a second temporary promotion (either at the same or a higher grade), the 5-year period starts running anew with the second temporary promotion. Also, if an employee is noncompetitively promoted for 120 days, and the promotion is extended after competition has been held, the first 120 days counts towards the 5-year limit.

If a legitimate need were to extend beyond 5 years, OPM could approve an extension of a promotion. However, the 5-year limit should satisfy the great majority of agency situations. If a need appears to extend beyond 5 years, agencies should consider whether a permanent promotion is more appropriate.

#### b. Agency Delegation

The proposed regulation did not require agencies to enter into written delegation agreements with OPM, as is now the case for term promotions. We received no comments on this issue. The final regulation, as proposed, grants the authority to all agencies without the need for individual delegations.

### c. Employee Notice

The proposed regulation required agencies to give employees advance written notice of the conditions of a time-limited promotion. One commenter suggested that agencies should obtain an employee's written acknowledgement of receipt of this notice. We have not adopted this suggestion. Other provisions where advance notice is required, such as proposed adverse action, do not require agencies to obtain written acknowledgement, and we think such a requirement is not necessary here either. The final regulation leaves to agency discretion the decision of how it would show that advance notice was given, should this become necessary. If an agency obtains a written acknowledgement, the acknowledgement would be a temporary document appropriate for filing on the left side of the employee's Official Personnel Folder.

In some situations, it will not be possible to give advance notice of the conditions of a time-limited promotion. For example, an agency's policy may require it to temporarily promote an employee who has served in a position on detail for a particular period of time. Compliance with these nondiscretionary provisions sometimes requires agencies to make temporary promotions before they can provide an advance notice. The final regulation provides that in these situations an agency should give the notice as soon as possible after the promotion is made.

We have also changed the final regulation to require that the reason for making the promotion time limited be included in the notice along with the requirement for competition for promotions beyond 120 days, where applicable.

### d. Documentation

The proposed regulation require agencies to document the specific reason for the time-limited promotion on the SF 50, Notification of Personnel Action, documenting the action. One commenter found this requirement unnecessary since the employee receives advance notice of the conditions, while another commenter found this documentation to be insufficient. We agree that a remark on the SF 50 is not necessary if the written notice to the employee provides it. We have changed the regulation accordingly.

### e. Right To Return to Former Grade

The proposed regulation provided that a time-limited promotion could be

ended at any time an employee returned to the position from which promoted, or to a different position of equivalent grade and pay, without following the procedures in 5 CFR parts 351, 432, 752, or 771, if advance notice of the conditions had been given to the employee.

One commenter questioned OPM's authority to allow promotions for extended periods and then to end the promotions without due process or procedures of statute. The commenter noted that statutory law does not cite as an exception to either the adverse action or reduction in force procedures the right to avoid those laws by using a temporary promotion status.

OPM believes this regulation is within its authority and is consistent with applicable case law. This regulation reflects *Phipps v. Department of Health and Human Services*, 767 F.2d 895 (Fed. Cir. 1985). In that case, the U.S. Court of Appeals for the Federal Circuit held that if agencies had informed employees in advance that a promotion was only temporary, they are not required to follow adverse action procedures when terminating a temporary promotion at any time.

OPM notes also that the term promotion authority—which allows agencies to promote employees for 4 years, and longer with OPM approval—has been in effect since 1980 and has withstood legal challenge. Also, the Merit Systems Protection Board has affirmed and applied *Phipps* in the case of *Mosley v. Department of the Navy*, 31 M.S.P.R. 689 (1986). In *Mosley*, the employee was returned to his former position after termination of a temporary promotion of approximately 3 years and 3 months. In citing *Phipps*, the Board found the employee had not been the subject of an adverse action appealable to the Board.

Another commenter noted that the Supplementary Information, which accompanied the proposed regulation, seemed to suggest that temporary promotions and the termination of temporary promotions are not subject to labor agreements or negotiated grievance procedures. The regulation itself does not refer to any grievance procedure negotiated under 5 U.S.C. 7121 or to any negotiated agreements concerning temporary promotions. The revision of § 335.102(f) does not relieve an agency of its obligation to comply with any applicable contract provision.

Several commenters suggested that we discuss, either in regulation or elsewhere, how an employee's pay is set on return to the grade from which promoted. On return to the former

grade, an agency, may set an employee's pay based on:

(1) The highest previous rate rule, provided that the employee's time-limited promotion lasted for 1 year or more in a General Schedule position (see 5 CFR 531.203(c)); or

(2) The step in the former grade the employee would have held had he or she remained in that grade (see 5 CFR 531.407(c)(5) and 532.417).

An employee is not eligible for grade retention or pay retention on return to the former grade (see 5 CFR 536.105(b)).

### f. Noncompetitive Actions

In the notice of proposed rulemaking, OPM invited comment on the existing requirement that time-limited promotions for more than 120 days are subject to merit promotion competition. OPM proposed to revise Federal Personnel Manual Chapter 335 to provide that prior service during the preceding 12 months must be counted toward the 120 days only when it was under a noncompetitive time-limited promotion or detail to a higher grade. Time served after competitive selection would not be included.

All three commenters who specifically addressed this change supported it. OPM is adopting the change as proposed to be effective on the same date as this final regulation. We also issue notice of the change through the Federal Personnel Manual.

One commenter suggested that the 120-day limit should apply only to assignments to the same or identical position or duties. We have not adopted this suggestion. The noncompetitive 120-day period is intended to help meet the needs of management to obtain the services of an employee quickly while at the same time assuring that an employee does not gain an undue advantage over other candidates if the position is filled later on a permanent basis.

One commenter suggested the 120-day period should start anew for a detail or time-limited promotion above a grade to which an employee has been permanently promoted or received a competitive time-limited promotion. We agree. Another commenter suggested allowing additional noncompetitive 120-day periods at successively higher grade levels. We have not adopted this suggestion because it would allow subsequent noncompetitive promotions to multiple grade levels for periods much longer than 120 days.

OPM notes also that an agency may noncompetitively promote an employee on a time-limited basis if it can take the same action on a permanent basis. Examples: When an employee previously held the grade on a

permanent basis in the competitive service and did not lose it for performance or conduct reasons; when an employee is in a career ladder and has higher grade promotion potential; or when an employee's position is reclassified at a higher grade because of additional duties and responsibilities.

#### g. Miscellaneous

One commenter suggested that service under a time-limited promotion should count toward satisfying supervisory or managerial probation. The Federal Personnel Manual allows agencies to require probation for temporary promotions of more than 120 days to supervisory or managerial positions. Agencies also may credit time under temporary promotion toward satisfying supervisory or managerial probation.

One commenter was concerned that an employee who is compensably disabled while on a time-limited promotion would be returned to the former grade level, resulting in injury compensation at the lower salary. This is not correct. The Office of Workers' Compensation Programs, Department of Labor, advises that injury compensation is computed based on the grade of the position held at the time of an injury.

Another commenter expressed a need for OPM guidance on whether an agency could permanently fill the position of an employee who is serving on a time-limited promotion. Under this regulation, an employee is entitled to be returned to his or her former position or one of equivalent grade and pay. Therefore, procedures for filling the former position would be addressed appropriately through agency administrative policy or negotiated agreement.

Another question was whether an individual selected for a second promotion while serving under a time-limited promotion must first be returned to the former grade level before the second promotion is processed. Unless the employee actually will return to the former position, there is no need or requirement to process a change to lower grade personnel action before processing the second promotion.

#### h. Parts 432 and 752 Exclusions

Although this authority to make time-limited promotions covers only employees in the competitive service, agencies may promote excepted service employees for temporary periods if the appointment authorities covering these employees permit it. Both parts 432 and 752 of 5 CFR exclude from covered actions the termination of "temporary or term promotions" where agencies have informed the employees that the

promotions were to be of limited duration, and returned the employees to the positions from which they were temporarily promoted or to ones of equivalent grade and pay. These provisions apply to all competitive and excepted service employees covered by parts 432 and 752. (See 5 CFR 432.102(b)(13) and 752.401(b)(12).)

The reference to "temporary or term promotions" under parts 432 and 752 includes time-limited promotions and, thus, excludes time-limited promotions under this regulation. Conforming language changes will be made in the future.

#### i. Extension of Current Temporary and Term Promotions

For employees under temporary or term promotions of less than 5 years on the effective date of this regulation, agencies are authorized to extend their promotions for up to a total of 5 years. However, time served prior to such extension counts towards the total 5-year limit.

#### j. Conforming Change in Part 511

A conforming change, that was not included in the proposed regulation, is made in 5 CFR part 511 dealing with position classification appeals. Under part 511, an employee may request an OPM decision on the series or grade of the employee's position, although certain classification-related matters may not be the subject of an appeal or grievance. Under § 511.607(b)(3), an employee may not appeal to OPM or grieve the class, grade, or pay system of a position to which detailed or temporarily promoted, but an employee on a term promotion for more than 2 years may appeal the classification of the position to OPM. OPM has made a conforming change in § 511.607(b)(3) to give the equivalent right to employees who have served under time-limited promotions for 2 years or more.

#### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

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

#### List of Subjects

##### 5 CFR Part 335

Government employees.

##### 5 CFR Part 511

Administrative practice and procedure, Freedom of information, Government employees, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending parts 335 and 511 of title 5, Code of Federal Regulations, as follows:

#### PART 335—PROMOTION AND INTERNAL PLACEMENT

1. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-58 Comp. p. 218.

2. In § 335.102, the introductory text is republished for the convenience of the reader, paragraph (g) is removed, introductory text is added to paragraph (f), and paragraph (f)(1) is revised to read as follows:

#### § 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to part 319 of this chapter, an agency may:

\* \* \* \* \*

(f) Make time-limited promotions to fill temporary positions, accomplish project work, fill positions temporarily pending reorganization or downsizing, or meet other temporary needs for a specified period of not more than 5 years, unless OPM authorizes the agency to make and/or extend time-limited promotions for a longer period.

(1) The agency must give the employee advance written notice of the conditions of the time-limited promotion, including the time limit of the promotion; the reason for a time limit; the requirement for competition for promotion beyond 120 days, where applicable; and that the employee may be returned at any time to the position from which temporarily promoted, or to a different position of equivalent grade and pay, and the return is not subject to the procedures in parts 351, 432, 752, or 771 of this chapter. When an agency effects a promotion under a nondiscretionary provision and is unable to give advance notice to the employee, it must provide the notice as soon as possible after the promotion is made.

\* \* \* \* \*

#### PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

3. The authority citation for part 511 continues to read as follows:

Authority: 5 U.S.C. 5115, 5338, 5351.

4. In § 511.607, paragraph (b) introductory text and paragraph (b)(3) are revised to read as follows:

**§ 511.607 Nonappealable issues.**

\* \* \* \* \*

(b) The following issues are neither appealable nor reviewable:

\* \* \* \* \*

(3) The class, grade, or pay system of a position to which the employee is detailed or promoted on a time-limited basis, except that employees serving under time-limited promotion for 2 years or more may appeal the classification of their positions to the Office under these procedures.

\* \* \* \* \*

[FR Doc. 93-27384 Filed 11-8-93; 8:45 am]

BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 319**

[Docket No. 91-074-5]

**Importation of Monterey Pine Logs From Chile and Monterey Pine and Douglas-Fir Logs From New Zealand**

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

**ACTION:** Interim rule.

**SUMMARY:** We are amending our foreign quarantine regulations by adding restrictions on the importation of Monterey pine logs from Chile. This change requires that Monterey pine logs from Chile meet certain treatment, handling and other requirements to be eligible for importation into the United States. We are also making minor changes to the current regulations for importation of Monterey pine and Douglas-fir logs from New Zealand. These changes appear necessary because there is increased interest in importing large volumes of logs into the United States, and restrictions are necessary to control plant pest risks associated with importing these logs.

**DATES:** Interim rule effective November 2, 1993. Consideration will be given only to comments received on or before January 10, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-074-5. Comments received may be

inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard L. Orr, Entomologist, Planning and Design, Plant Protection and Quarantine, APHIS, USDA, room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8939.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Animal and Plant Health Inspection Service (APHIS) published an interim rule in the *Federal Register* on February 16, 1993 (58 FR 8524-8533, Docket No. 91-074-4). That interim rule (referred to below as the New Zealand interim rule), which was effective January 19, 1993, established "Subpart—Logs From New Zealand," 7 CFR 319.40-1 through 319.40-8, to control the plant pest risks presented by the importation into the United States of Monterey pine and Douglas-fir logs from New Zealand.

As noted in an advance notice of proposed rulemaking published in the *Federal Register* on September 22, 1992 (57 FR 43628-43632, Docket No. 91-074-2), we are also developing comprehensive regulations to control the plant pest risks presented by the importation of logs, lumber, and other unmanufactured wood from anywhere in the world. We expect to propose these comprehensive regulations in the near future. However, in the course of developing the comprehensive regulations, we identified plant pest risks associated with current importations of logs from New Zealand, and also identified regulatory requirements that would control these pest risks. Therefore, to reduce these plant pest risks as soon as possible, we promulgated the interim rule imposing regulatory requirements for certain logs from New Zealand.

We have since identified plant pest risks associated with Monterey pine logs from Chile. We have determined that Monterey pine logs from Chile may be imported under conditions similar to those applicable to Monterey pine and Douglas-fir logs from New Zealand, without presenting a significant risk of introducing plant pests into the United States.

There are no APHIS regulations currently in effect restricting importation of Monterey pine logs from

Chile. Requests to import these logs are being reviewed on a case-by-case basis, and any shipments arriving at United States ports are subject to inspection and any treatment or special handling that our inspectors find necessary. This interim rule will provide standard regulatory requirements for importing Monterey pine logs from Chile.

During the development of this rule, the Forest Service of the United States Department of Agriculture completed a pest risk assessment for the importation of Monterey pine from Chile<sup>1</sup> (referred to below as the Chile Assessment). APHIS employed a great deal of the information generated by this assessment in developing this rule. The study helped us expand and refine a model for addressing plant pest risks associated with importing Monterey pine logs from Chile.

We are, therefore, adding requirements to the regulations for importation of Monterey pine logs from Chile. In addition, we are making two minor changes to the regulations that will affect logs imported from both Chile and New Zealand. These changes, which are discussed below, concern storage of logs with other wood articles in vessel holds or containers during movement, and the heat treatment required for logs after they arrive in the United States.

We are also adding a provision, affecting log imports from both Chile and New Zealand, which requires the importer to give APHIS 7 days notice prior to the expected date of arrival of log shipments.

**Requirements for Importation of Monterey Pine Logs From Chile**

We have determined that the requirements for importing Monterey pine and Douglas-fir logs from New Zealand, if applied to importing Monterey pine logs from Chile, will be sufficient to prevent the introduction and dissemination of plant pests associated with these logs from Chile.

The importation requirements established for Monterey pine logs from Chile will control the plant pest risks identified in "Pest Risk Assessment of the Importation of *Pinus radiata*, *Nothofagus dombeyi* and *Laurelia philippiana* Logs from Chile" (the Chile assessment; see Footnote 1). The Chile

<sup>1</sup>"Pest Risk Assessment of the Importation of *Pinus radiata*, *Nothofagus dombeyi* and *Laurelia philippiana* Logs from Chile," USDA, Forest Service, Miscellaneous Publication No. 1517, September 1993. This publication can be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays

assessment studied the plant pests that have been recorded on Monterey pine in Chile, and included detailed studies of the risks associated with 10 insects and 4 pathogenic diseases that were identified as representative of the groups of organisms posing a potential plant pest problem.

The insects studied in detail are bark weevils of the genus *Ryephenes*, introduced pine bark beetles (*Hylurgus ligniperda*, *Hylastes ater*, and *Orthotomicus erosus*), a pine bark anobiid (*Ernobius mollis*), a siricid (*Urocerus gigas gigas*), wood-boring beetles (*Buprestis novemmaculata*, *Colobura alboplagiata*, *Callideriphus laetus*), termites (*Cryptotermes brevis*, *Neotermes chilensis*, *Porotermes quadricollis*), the spiny pine caterpillar (*Ormiscodes cinnamomea*), a bagworm (*Thanatopsycha chilensis*), white grubs (*Hylamorpha* spp., *Brachysternus* spp., *Sericoides* sp.), and the European pine shoot moth (*Rhyacionia buoliana*).

The diseases of Monterey pine in Chile studied in detail are Diplodia shoot blight (*Sphaeropsis sapinea*), needle diseases (*Dothistroma pini*, among others), stain fungi (*Ophiostoma* spp.), and root/stem rots (*Armillaria* spp., *Phellinus* spp.).

The importation requirements and treatments needed to control the risk of introducing these 10 insects and 4 diseases into the United States will also serve to prevent the introduction of other plant pests that were identified in the Chile assessment. For example, this rule requires methyl bromide fumigation of the logs to control the 10 insects named above, because other treatments or requirements (short of heat treatment) cannot ensure that the subsurface wood of a log is free from these plant pests. The required methyl bromide fumigation will also destroy other plant pests identified in the Chile assessment, eliminating the need to develop separate requirements to address the risks presented by these plant pests. Similarly, this rule requires that logs must be sent to facilities in the United States that will subject the lumber derived from the logs to a specific heat treatment. This requirement primarily addresses pathogenic fungi, but the heat treatment will also destroy any other plant pests associated with the logs.

The requirements for importation of Monterey pine logs from Chile are discussed below. Some of the handling and treatment requirements apply prior to importation, some at the port of first arrival, and some at a facility where the logs are processed in the United States. (The New Zealand interim rule contains additional background concerning how

these requirements were first developed and applied to New Zealand logs.)

#### Definitions

We will continue to use most of the definitions established by § 319.40-1 of the New Zealand interim rule. This section contains basic definitions of terms used throughout the regulations. The definitions of "Administrator," "APHIS," "Compliance agreement," "Import (imported, importation)," "Inspector," "Permit," "Plant pest," "Port of first arrival," "Treatment Manual," and "United States" are consistent with our use of these terms in other foreign quarantine regulations in part 319, and describe the framework in which we propose to conduct operations to enforce our regulations.

A key definition, "Log," has been changed from the New Zealand interim rule so it now reads "The bole of a *Pinus radiata* (Monterey pine) or *Pseudotsuga menziesii* (Douglas-fir) tree from New Zealand; the bole of a *Pinus radiata* (Monterey pine) tree from Chile; trimmed timber from such a tree that has not been further sawn." These logs are the articles to which the requirements of the rule apply. We are changing this definition to regulate logs and trimmed timber of Monterey pine from Chile because importers plan to bring substantial volumes of these logs to the United States, and the Chile assessment has identified significant plant pests associated with these logs.

We are amending the definition of "Certificate" that was employed in the New Zealand interim rule, to remove the word "phytosanitary" and to allow the certificate to be signed by any authorized official of the New Zealand or Chile governments, rather than only plant protection officials. We have learned that New Zealand and Chile may assign employees from outside their plant protection agencies (e.g., their forestry agencies) to perform duties and sign certificates in connection with log exports. We believe certificates signed by any authorized official of the New Zealand or Chile governments will serve the purposes of the regulations, and are changing the definition of "certificate" accordingly. Since the definition of "Phytosanitary Certificate" in the International Plant Protection Convention is limited to certificates issued by employees of national plant protection services, we are removing the word "phytosanitary" from the definition in our regulations, since the certificate we require would not be a phytosanitary certificate.

#### Requirements Prior to Importation; Tree Health, Debarking, Fumigation

Logs imported from Chile must be accompanied by a permit issued by APHIS, a certificate issued by the government of Chile, and other documentation that must accompany the logs.

The permit requirement ensures that for each request to allow importation of logs, APHIS has determined the logs are eligible for importation in accordance with the regulations and has given permission for movement of the logs into the United States.

The certificate requirement ensures that imported logs are accompanied by a certificate that documents that the logs meet requirements in this rule that can be verified by the government of Chile. In addition, the certificates issued by Chile usually contain the following information: The genus and species of the tree from which the logs were derived; the country of origin; the quantity of logs to be imported, and any treatments of the logs which are required by the regulations and were performed prior to arrival at the port of first arrival in the United States.

In some cases, all of this information may not be contained in the certificate. Where this is so, any of the required information not contained in the certificate must be contained in an additional document signed by the importer and accompanying the logs.

The requirements that apply to logs prior to importation include a requirement that the logs must be from live, healthy trees that are apparently free of plant pests, plant pest damage, and decay organisms. This requirement reduces the potential for shipping logs that present a significant risk of introducing plant pests into the United States. Another pre-importation requirement is that the logs must be debarked and fumigated with methyl bromide in accordance with the standards established by § 319.40-5(d). If fumigation is done in a sealed container, it must be the same sealed container which is used to export the logs to the United States. This minimizes the chance that logs fumigated in one container could become contaminated with plant pests while being transferred to another, unfumigated container. Fumigation is required because it effectively destroys many plant pests of concern. Debarking removes plant pests associated with the bark, increases the penetration into the log of methyl bromide, and makes holes made by borer plant pests visible to inspection.

### Requirements at the Port of First Arrival

Monterey pine logs from Chile will be subject to the same requirements at the port of first arrival that currently apply to Monterey pine logs or Douglas-fir logs from New Zealand. The logs must be inspected at the port of first arrival and cleaned or treated as required by an inspector. An inspector may inspect any log, at a time and place determined by the inspector; and the inspector may order the logs to be treated, or may refuse entry of the logs, if the logs do not comply with the regulatory requirements or are contaminated with plant pests, soil, or prohibited contaminants. Logs must meet certain marking and identity requirements designed to assist inspection of logs at the port of first arrival. Inspectors may take samples from logs for the purpose of determining whether the logs contain plant pests that are not apparent to visual inspection, but can be detected in a laboratory.

The following specific port of arrival requirements apply to regulated logs from Chile and New Zealand:

#### *Procedures for All Logs*

All logs imported are required, as a condition of entry into the United States, to be inspected, and are subject to any cleaning or treatment at the port of first arrival that is required by an inspector, and the logs and any products of the logs shall be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

Logs shall be assembled for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector. If an inspector finds that a shipment of logs imported into the United States is so infested with a plant pest that, in the judgment of the inspector, the logs cannot be cleaned or treated, or contain soil or other prohibited contaminants, the entire shipment may be refused entry into the United States.

No person shall move any logs imported into the United States from the port of first arrival unless and until an inspector notifies the person, in writing or through an electronic database, that the logs have been inspected and found to be apparently free of plant pests, and are in compliance with all regulations in this subpart.

### *Visual Examination of Logs at Port of First Arrival*

Logs imported into the United States which have been debarked in accordance with § 319.40-5(b) and can be safely and practically inspected would be visually examined for plant pests at the port of first arrival. Treatment appropriate to the logs and contained in the Plant Protection and Quarantine Treatment Manual (incorporated by reference in accordance with 7 CFR 300.1) will be required if plant pests are found.

#### *Marking and Identity of Logs*

Logs, at the time of importation, must bear on the outer container (if in a container), on the logs (if not in a container), or on a waybill or other shipping document accompanying the logs the following information:

1. Identity and quantity of the logs;
2. Country where the trees from which the logs were derived were grown;
3. Name and address of the person importing the logs;
4. Name and address of consignee of the logs;
5. Identifying shipper's mark and number; and
6. Number of written permit authorizing the importation of the logs into the United States.

#### *Sampling for Plant Pests at Port of First Arrival*

Any imported logs may be sampled by an inspector for plant pests at the port of first arrival.

#### *Requirements After Importation*

After importation, the logs must be moved directly to a sawmill or other processing facility that operates under a compliance agreement in accordance with § 319.40-6. At the facility, lumber sawn from the logs must immediately be heat treated with moisture reduction in accordance with § 319.40-5(c). Products other than lumber must be immediately heat treated, but moisture reduction is not required. This immediate heat treatment reduces the opportunity for deep-wood pests that might be exposed by the cutting operation to move from the freshly-cut lumber. Other products generated from the logs must be disposed of by burning, heat processing, or other processing that will destroy any plant pests associated with the articles. Composting and use as mulch are prohibited unless preceded by fumigation in accordance with § 319.40-5(d) or heat treatment with moisture reduction in accordance with § 319.40-5(c). Mulching or composting of

untreated chips would distribute the chips in soil and enhance opportunities for pest movement. Wood chips and sawdust may be moved in enclosed trucks for processing at another facility operating under a compliance agreement in accordance with § 319.40-6, if they are moved in enclosed trucks to control pest risk in transit.

The logs and other products from the logs must be processed at the facility operating under a compliance agreement within 60 days from the time the logs are released from the port of entry. This time requirement would reduce opportunities for the logs to be processed other than in accordance with the regulations; reduce the possibility of introduction of plant pests and diseases; and would reduce the time during which our inspectors monitor compliance to a manageable span of time for each shipment.

#### *Segregation of Logs During Movement*

The New Zealand interim rule required that logs be kept segregated from other wood articles during movement to the United States through the time the logs have been processed at a facility in the United States. This requirement was established to help prevent possible movement of plant pests from the logs to other wood articles that could host the pests, and from other wood articles to the logs. The only exception the New Zealand interim rule granted was that wood packing materials that have been fumigated in accordance with § 319.40-5(d) may be in the same ship's hold with uncontainerized logs, or in the same container with containerized logs.

We are broadening this exception so that imported logs may be moved in the same hold or sealed container with any wood articles that have been fumigated in accordance with § 319.40-5(d) or kiln dried. Either of these treatments will sufficiently control the risk of plant pest spread during movement. This change will facilitate normal commercial practices, e.g., moving kiln dried lumber and fumigated logs together in the same hold.

#### *Heat Treatment*

The New Zealand interim rule provided that, after the logs arrived at a sawmill in the United States, lumber and other products sawn from the logs must immediately be heat treated with moisture reduction in accordance with § 319.40-5(c). This immediate heat treatment reduces the opportunity for deep-wood pests that might be exposed by the cutting operation to move from the freshly-cut lumber.



Heat treatment with moisture reduction was specified primarily because we believed that in addition to being effective, it would be consistent with the processing intended for all logs imported under the regulations. However, we have learned that some sawmills intend to produce wood products (for example, veneer) from the imported logs that cannot be produced if moisture reduction is employed.

The purpose of the heat treatment is to destroy pests that could otherwise spread with the finished wood products. We have determined that heat treatment of logs from Chile and New Zealand will do so, even if moisture reduction is not required. Therefore, we are changing the regulations to allow use of either a wet or dry heat process, as long as the process raises the temperature of the center of each treated article to at least 56 °C. and maintains the treated articles at that center temperature for at least 30 minutes. In addition to preventing the spread of plant pests, this change is consistent with the processing commonly used for the two major products sawmills will be deriving from these logs (kiln drying for lumber; hot water and steam processing for veneer).

#### Other Treatments and Safeguards

Section 319.40-5 describes the methods for conducting heat treatment, and several other treatments that are required in connection with importing logs from Chile. APHIS has studied these treatments and determined that they are effective means for reducing plant pest risk in logs from Chile.

Logs may only be imported if accompanied by a certificate issued by Chile that certifies that the logs have been subjected to treatments required prior to arrival of the logs in the United States. Section 319.40-5(a) concerns APHIS actions in the event that APHIS determines that certificates or other documents required for the importation of logs are inaccurate. If APHIS determines that a certificate or other document required for the importation of logs is inaccurate, the logs that are the subject of the certificate or other document may be refused entry into the United States. In addition, APHIS may determine not to accept any further certificates for the importation of logs in accordance with this subpart, and APHIS may determine not to allow the importation of any or all logs from a country that issues an inaccurate certificate until corrective action acceptable to APHIS establishes that certificates issued in that country will be accurate.

There is no general requirement in these regulations that treatments

performed outside the United States must be performed under the supervision of an APHIS inspector. To ensure the proper application of treatments and safeguards that do not occur under direct APHIS supervision, APHIS will conduct monitoring inspections of treatments and safeguards applied in Chile in accordance with this section.

Paragraphs (b) through (d) of § 319.40-5 contain the minimum requirements for the following treatments: Debarking; heat treatment; and methyl bromide fumigation. Various combinations of these treatments are required for the importation of logs in accordance with § 319.40-4. The requirements for performing heat treatment were discussed above. The requirements for performing debarking and fumigation are discussed below.

#### Debarking

The standard is that no more than 2 percent of the surface of all logs in a shipment may retain bark, with no single log retaining bark on more than 5 percent of its surface.

Debarking is effective in eliminating many plant pests and pathogens on the surface of the logs, as well as most found within and immediately beneath the bark itself. Debarking also facilitates inspection for the presence of boring insects at the port of first arrival. Inspecting bark on large quantities of logs is a difficult, time-consuming process and is not practical.

To be effective, bark removal must be thorough. From a practical viewpoint, APHIS recognizes that complete removal of every scrap of bark is not practical. A tolerance level of 2 percent, with no single log retaining bark on more than 5 percent of its surface, appears reasonable to us based on our experience inspecting shipments at ports of first arrival and observing debarking operations. We believe that the plant pest risk associated with the remaining 5 percent of bark on an imported log would be minimized by the other regulatory controls applicable to the importation of logs, such as fumigation, kiln drying, consuming, or manufacturing products of the logs.

#### Methyl Bromide Fumigation

Methyl bromide is very effective against plant pests, including all stages of insects, mites, snails, slugs, and nematodes, as well as most fungi. Its effectiveness as a fumigant was discovered in 1932. Since then, it has become the fumigant of choice in quarantine treatments.

Methyl bromide diffuses laterally and downward readily, and upward slowly. These characteristics make blower or fan circulation essential, at least during the first 15-60 minutes, to ensure thorough gas distribution. In addition, circulation enhances penetration. A volatilizer is required when introducing methyl bromide. Products to be fumigated must be enclosed.

Studies have shown that methyl bromide fumigation effectively kills plant pests if conducted in a way that ensures exposure of the entire article to the necessary gas concentration for the necessary time. However, circumstances during treatment can reduce the effectiveness of the fumigation.

The following minimum standard for methyl bromide fumigation treatment is required for logs. Any method of fumigation that meets or exceeds the specified temperature/time/concentration standards is acceptable. Information on the effectiveness of methyl bromide fumigation for regulated logs when used in accordance with the specified temperature/time/concentration standards is available through the office identified in the "FOR FURTHER INFORMATION CONTACT" section of this document.

The logs and the ambient air must be at a temperature of 5 °C. (41 °F.) or above throughout fumigation. The fumigation must be conducted using schedule T-404 contained in the Treatment Manual, or, using any fumigation method with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial dosage.

#### Processing at Facilities Operating Under Compliance Agreements

This rule allows the importation of logs that may continue to present a low level risk of introducing plant pests into the United States until the time the logs are processed. To prevent the introduction of plant pests from these logs into the United States, we require that the logs be moved from the port of first arrival directly to a processing facility and processed there, under conditions that would minimize the introduction of plant pests.

To ensure that such facilities operate in a manner that will prevent introduction of plant pests, we require that such facilities operate under a compliance agreement with APHIS. The compliance agreement would specify safeguards necessary to prevent spread of plant pests from the processing facility, such as disinfection practices,

covering or container requirements, requirements for disposal of waste wood or byproducts, requirements to ensure the processing method effectively destroys plant pests, and application of chemical materials in accordance with the Treatment Manual.

Any compliance agreement may be canceled by the inspector who is supervising its enforcement whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the conditions of the compliance agreement. If the cancellation is oral, the decision to cancel the compliance agreement and the reasons for cancellation of the compliance agreement shall be confirmed in writing as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict. Rules of practice governing the hearing will be adopted by the Administrator. These provisions will provide a fair method of resolving disputes regarding withdrawal.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Logs from Chile pose a serious threat of introducing plant pests into the United States. Losses caused by these plant pests represent a serious threat to the timber industry and the plant resources of the United States. Any delay in implementing these regulations could result in the introduction of plant pests from Chile into the United States.

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

and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than \$100 million; (2) will not 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; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The United States has become the world's leading importer of wood and wood products. In 1990, the United States imported the equivalent of 34.4 million cubic meters of logs, lumber, and other wood products valued at about \$5.1 billion. Total imports nearly tripled between 1950 and 1990, with most of this increase occurring after 1970. Historically, virtually all wood product imports have been from Canada.

Domestic production of logs, lumber, and other wood products has increased steadily since 1950. In roundwood equivalents, production in 1990 was 1.6 times greater than in 1950. Most timber production occurs in southern and western States. In 1990, Oregon and Washington accounted for about 16 percent of the total U.S. tree harvest.

Domestic logging companies are facing increasing challenges from conservation groups. Conservationists are opposed to many tree harvesting practices, especially clear cutting. In addition, concern over habitats for wildlife has raised questions about replacement of old growth/diversified forests with monoculture. Conservation issues are likely to limit future tree harvests in several northwestern States.

Nationally, commercial forest lands are projected to decrease by about 4 percent over the next 50 years. Production is likely to decline in the Pacific Northwest and increase in the South and Rocky Mountain States. Over the next 50 years, new technologies may allow wood products companies to remove larger amounts of wood

products from each tree. A slightly limited domestic harvest combined with higher consumer demand would likely result in an increased demand for imported wood and wood products. Wood imports from alternative sources have the potential to introduce and disseminate exotic plant pests and diseases throughout the United States.

Alternative supplies of logs and other wood products have been located in Chile and other countries. This rule amends the foreign quarantine regulations by imposing new restrictions to regulate the importation of Monterey pine logs from Chile. This rule requires that Monterey pine logs from Chile meet specific requirements before being allowed entry into the United States. These new regulations are necessary to minimize the potential for the entry and dissemination of exotic plant pests and pathogens into the United States.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of regulations on small entities. At present, there are approximately 4,307 sawmills in the United States. According to Small Business Administration (SBA) data, 4,289 domestic sawmills (99.5 percent) are classified as small entities. Sawmills that employ fewer than 500 people are classified as small according to SBA criteria. Total sales volume for these small sawmills averages about \$2.2 million annually.

The United States has historically imported a negligible amount of Monterey pine from Chile. APHIS estimates that the annual import volume of Monterey pine from Chile could total about 100,000 cubic meters. Imported Chilean logs will likely supplement lumber production in Washington, Oregon, and northern California. Therefore, the economic impact will be concentrated in the Pacific Northwest.

Domestic log prices vary widely depending on species and wood quality. Current domestic prices for Monterey pine average about \$60 per cubic meter. Therefore, if 100,000 cubic meters of logs are imported, APHIS estimates that the annual value of Chilean log imports would be approximately \$6 million, although the value of imports would likely be lower than \$6 million during the initial year. This represents far less than 1 percent of the annual multi-billion dollar U.S. timber harvest.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. State and local laws and regulations regarding logs imported under this rule will be preempted while the logs are in foreign commerce. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of logs under the conditions specified in this rule will not present an unacceptable risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule has been submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory

Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

1. The authority citation for part 319 is revised to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. The heading for the subpart consisting of §§ 319.40-1-319.40-8 is revised to read as follows:

**Subpart—Logs From Chile and New Zealand**

3. In § 319.40-1, the definitions of "Certificate" and "Log" are revised to read as follows:

**§ 319.40-1 Definitions.**

**Certificate.** A certificate of inspection relating to logs, which is issued by an official who is authorized by the national government of Chile or New Zealand to issue certificates for the purposes of this subpart, and which contains a description of the logs; certifies that the logs have been inspected, are believed to be free of plant pests, and are believed to be eligible for importation pursuant to the laws and regulations of the United States; and contains any specific additional declarations required under this subpart.

**Log.** The bole of a *Pinus radiata* (Monterey pine) or *Pseudotsuga menziesii* (Douglas-fir) tree from New Zealand; the bole of a *Pinus radiata* (Monterey pine) tree from Chile; trimmed timber from such a tree that has not been further sawn.

**§ 319.40-2 [Amended]**

4. In § 319.40-2, paragraph (a) is amended by adding the words "Chile or" immediately before the words "New Zealand".

**§ 319.40-4 [Amended]**

5. In § 319.40-4, paragraph (a)(4) is amended by adding the words "or kiln dried" immediately after "\$ 319.40-5(d)" both places it appears.

6. In § 319.40-4, paragraph (c)(1) is amended by removing the words "with moisture reduction".

7. In § 319.40-5, paragraph (c) is revised to read as follows:

**§ 319.40-5 Treatments and safeguards.**

(c) **Heat treatment.** This may employ wet or dry heat, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated article to at least 56 °C and maintains the treated articles at that center temperature for at least 30 minutes.

8. In § 319.40-7, paragraph (b) is revised to read as follows:

**§ 319.40-7 Inspection and other requirements at port of first arrival.**

(b) **Notice of arrival; visual examination of logs at port of first arrival.** (1) At least 7 days prior to the expected date of arrival in the United States of a shipment of logs imported in accordance with this subpart, the permittee or his or her agent must notify the APHIS Officer in Charge at the port of arrival of the date of expected arrival. The address and telephone number of the APHIS Officer in Charge will be specified in the permit issued by APHIS. This notice may be in writing or by telephone. The notice must include the number of the permit issued for the logs; the name of the vessel carrying the logs; the type and quantity of the logs; the expected date of arrival; the country of origin of the logs; the name and the number, if any, of the dock where the logs are to be unloaded; and the name of the importer or broker at the port of arrival.

(2) Logs imported into the United States that can be safely and practically inspected will be visually examined for plant pests at the port of first arrival. Treatment appropriate to the logs and contained in the Treatment Manual will be required if plant pests are found or if the logs cannot be safely or practically inspected.

Done in Washington, DC, this 2nd day of November 1993.

Patricia Jensen,  
Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-27444 Filed 11-8-93; 8:45 am]  
BILLING CODE 3410-34-P

## 7 CFR Part 354

[Docket No. 92-148-2]

**User Fees—Agricultural Quarantine and Inspection Services****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international air passenger, commercial aircraft, or commercial vessel. That action was necessary to avoid collecting more revenue than needed to cover the costs of the services and, in the case of the international air passenger and commercial aircraft fees, to avoid exceeding a statutory cap on revenue collection.

**EFFECTIVE DATE:** December 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** For information concerning user fees, contact Ms. Donna Ford, Head, AQI Section, User Fee Branch, BAD, APHIS, USDA, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5901. For information concerning agricultural quarantine and inspection services, contact Mr. Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

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

In an interim rule published in the *Federal Register* on December 31, 1992 (57 FR 62468-62473, Docket No. 92-148-1), and effective January 1, 1993, we amended the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection (AQI) services we provide in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international air passenger, commercial aircraft, or commercial vessel. That action was necessary to avoid collecting more revenue than needed to cover the costs of the services and, in the case of the international air passenger and

commercial aircraft fees, to avoid exceeding a statutory cap on revenue collection.

We solicited comments on the interim rule for a 30-day comment period ending on February 1, 1993. We received seven comments by the closing date: three from representatives of commercial airlines, two from airline industry associations, one from a maritime industry association, and one from a representative of a government employees union.

Four commenters welcomed the lowering of fees, but all seven commenters had objections related to either the amount of the decrease or the timing of the rulemaking. Those issues are addressed below.

In addition, six of the commenters questioned the legitimacy of our user fees in general or the fairness of the current AQI user fee structure. These issues, because they do not pertain to the decrease in AQI user fees, fall outside the scope of the current rulemaking and, therefore, are not discussed in this document. Any changes made as a result of those comments would be proposed as part of a separate rulemaking proceeding.

**Discussion of Comments**

*Comment:* The fact that the Animal and Plant Health Inspection Service (APHIS) has lowered the fee for commercial vessels shows that the fees were too high from the start. Shipowners and charterers who paid the fee in fiscal year (FY) 1992 are, therefore, entitled to refunds.

*Response:* APHIS collected higher than expected revenues from the commercial vessel user fee because the volume of activity in FY 1992 turned out to be higher than estimated. During the original rate development process, we estimated that FY 1992 costs would be approximately \$17,735,000 to inspect an estimated volume of 42,273 vessels. Our actual FY 1992 costs, however, were \$18,445,000 to inspect 47,438 vessels.

APHIS intends to use any excess collections from FY 1992 as a reserve. The APHIS user fee program is still relatively new, and we do not have an extensive collection history to help us predict long-term commercial vessel trends. By holding the excess funds in reserve, we will have a buffer to eliminate the need for yearly fee adjustments resulting from unanticipated fluctuations in vessel activity volumes.

*Comment:* By making the new user fees for commercial aircraft and international air passengers effective the day after the publication of the interim

rule, APHIS has disregarded the requirements of the Administrative Procedure Act and ignored the needs of the airline industry in terms of computer reservation system changes and the need to promulgate the new fee schedules among its employees and agents.

*Response:* As explained in the interim rule, the Administrator of APHIS determined that there was good cause for publishing the interim rule without prior notice, which is authorized under 5 U.S.C. 553. While APHIS regrets any inconvenience that the lack of prior notice may have caused, we felt it was important that the lower user fees be made effective as soon as possible in order for the public to benefit from the reduced rates. Had we published a proposed rule first, it is unlikely that the new rates would have been effective before July 1, 1993, by which time the balances in the user fee accounts would have been well above our costs and the international air passenger and commercial aircraft user fee collections would be higher than the statutory cap placed on each category.

*Comment:* According to the background information provided in the interim rule, APHIS accumulated a reserve of \$35 million from the aviation and vessel fees collected in FY 1991 and FY 1992. If APHIS seeks a reserve equal to 3 months' operating expenses, then only \$20 million would be required for the reserve. Because the reserve is \$15 million more than required, the excess reserve should be used to lower the fees even further. Because no additional reserves can be justified, APHIS should reduce its reserve requirements substantially so that any reserve is no more than a small fraction of its total annual inspection costs.

*Response:* APHIS accounts for the reserve by each fee category and does not cross-subsidize between categories. In FY 1992, APHIS added \$18.5 million to the operating reserves, with \$11.2 million going to the international air passenger reserve and \$7.3 million to the commercial vessel reserve. There was no reserve at all in the commercial aircraft category, which collected \$1.9 million less in revenue than its costs in FY 1992.

APHIS' user fee authority provides for the maintenance of a reasonable balance in the user fee account. During the original fee development process, we determined that the reserve for each category should equal one-fourth of the annual costs of providing AQI services in that category. We have since modified that approach to link the reserve requirement in each category to the category's collection schedule. The

reserves for the commercial aircraft and international air passenger user fee accounts are still one-fourth of their respective annual costs because those fees are collected in arrears on a quarterly basis. The reserve requirement for commercial vessels has been reduced to one-twelfth of that category's annual costs because those fees are remitted to APHIS monthly. We continue to believe that a fully funded reserve in each category's user fee account is essential to ensure the continuity of service in cases of bad debt, carrier insolvency, and fluctuations in activity volumes.

*Comment:* In the interim rule, APHIS projects that the new \$1.45 international air passenger user fee will generate \$52.4 million in FY 1993, which is more than \$4 million over the projected costs for the year, \$48.3 million. The international air passenger user fee, therefore, should be lowered further.

*Response:* The \$52.4 million we anticipate collecting in FY 1993 includes one quarter with the international air passenger fee at \$2.00 and the remaining three quarters at \$1.45. While excess revenue will be generated in FY 1993 in this category, the excess will be carried in the reserve. In calculating our new, lower fees, we examined the effect of the \$1.45 fee through FY 1994 and determined that if we lowered the fee further, we would recover less than our costs in FY 1994 and beyond.

*Comment:* The international air passenger user fee should be kept at \$2.00 and the commercial aircraft fee should be abolished.

*Response:* APHIS exercised its user fee authority in the Food, Agriculture, Conservation, and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, to fund portions of its AQI program for which Congress discontinued appropriating funds and directed APHIS to charge user fees. Under that authority, APHIS cannot subsidize the cost of one program with revenue from another. APHIS cannot include the cost of inspecting commercial aircraft in the international air passenger user fee unless it is directly related to the carriage of those passengers and not, for example, cargo.

*Comment:* According to information provided in the interim rule, APHIS collected \$73,048,573 from commercial aircraft and international air passenger AQI user fees in FY 1992, which is more than \$4 million over the congressionally imposed cap of \$69 million. The amount APHIS collected in excess of the

FY 1992 cap should be deducted from the FY 1993 cap and the international air passenger and commercial aircraft AQI user fees lowered accordingly.

*Response:* In FY 1992, a total of 30,368,914 international air passengers and 160,401 commercial aircraft were subject to inspections covered by user fees. From those inspections, APHIS eventually received the \$73,048,573 mentioned by the commenter, but only \$69.2 million of that was actually collected during FY 1992. When we saw it was likely that we would exceed the cap, we took immediate action to lower the international air passenger and commercial aircraft user fees. The new, lower fees are the result of our efforts to stay under the statutory cap. Through our semiannual reports, we have kept Congress informed of our collections and our efforts to stay under the cap. Any decision to lower the FY 1993 cap would have to be made by Congress.

*Comment:* The projected total cost for commercial aircraft AQI inspections in FY 1993 is \$17,391,082, which is \$484,712 more than the \$16,906,370 in projected revenue. Subtracting the Department's addition to the reserve, however, the total cost for commercial aircraft AQI inspections in FY 1993 would be \$13,951,088, which is \$2,995,282 less than the projected revenue. The fee should be recalculated using \$13,951,088 as the projected cost for commercial aircraft AQI inspections in FY 1993 to comply with the Congressional directive to charge only for services provided.

*Response:* As stated before, the authority under which we operate our user fee program does allow for the maintenance of a reasonable balance, or reserve, in each account. We cannot recalculate the commercial aircraft user fee for FY 1993 to exclude any addition to the reserve because, as explained above, the commercial aircraft category had no reserve at all at the end of FY 1992. Because we experienced a revenue shortfall in the commercial aircraft category in FY 1992, we recalculated the commercial aircraft user fee to include the annual cost of the program and a reasonable reserve. The new, lower fee was then adjusted to ensure that the reserve at the end of FY 1994 would not exceed 90 days' operating expenses. That adjustment accounts for the \$484,712 difference between FY 1993 expenses and revenues noticed by the commenter. It is worth noting that even with the addition to the fee of an amount for a reasonable reserve, we were still able to lower the commercial aircraft user fee by \$15.75.

*Comment:* Because APHIS gave such short notice, it is unlikely that any airlines were able to put the reduced fees in place as soon as the new fees became effective. As a result, the airlines probably collected more than they should have and could submit more money than anticipated to APHIS, thus pushing FY 1993 collections over the congressionally imposed cap.

*Response:* User fees are remitted by the airlines to APHIS on a quarterly basis. The payments for the second quarter of FY 1993, January 1 through March 31, 1993, were due on May 1, 1993. Because the new fees were published as part of an interim rule that became effective on January 1, 1993, the airlines, for the most part, remitted their commercial aircraft user fee payments and passed along the international air passenger user fee payments based on the fees that were in effect at the time they were incurred or collected. Those airlines that remitted at the higher rates were contacted by APHIS and refunded the excess amounts.

*Comment:* APHIS, with the acquiescence of Congress, continues to ratchet down funding for, and thus the costs of, providing inspection services. This reduction in funding is resulting in an ill-equipped and understaffed APHIS inspection force. The interim rule should be withdrawn and the AQI user fees returned to their previous levels.

*Response:* APHIS does not make its own decisions regarding funding for inspection services. During the budget process, APHIS, with guidance from the Department and the Office of Management and Budget, requests a level of funding that it believes to be necessary to fund the AQI program. The final decision on the level of funding that APHIS will receive, however, is made by Congress. APHIS then calculates its fees based on the spending authority provided by Congress in the annual appropriation. If we were to withdraw the interim rule and return the user fees to their previous levels, we would recover more in fees than the \$83.3 million AQI user fee appropriation authorized by Congress for FY 1993. Any collections over the authorized amount must remain in the user fee account, increasing the reserve even further. In addition to exceeding the appropriation, APHIS would also exceed the statutory caps placed on collections in the commercial aircraft and international air passenger categories.

*Comment:* APHIS should supply more information about its expenses, identify specific resources paid for, list the number of inspectors assigned to each port, and describe the exact nature of

the overhead that is built into its user fees.

*Response:* The information regarding expenses that we provided in the interim rule was, in scope, the same information that we used to set the new user fees. Our user fees are based on data gathered at the work unit, region, and headquarters levels. For members of the public who, like the commenter, wish to obtain additional information, the names, addresses, and telephone numbers of knowledgeable APHIS personnel were provided in the interim rule, and are provided in this document, under the heading "FOR FURTHER INFORMATION CONTACT." During the comment period that followed the publication of the interim rule, only one organization contacted APHIS for additional information.

Based on the facts presented in the interim rule and in this document, we are affirming the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

#### List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

#### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 354 and that was published at 57 FR 62468-62473 on December 31, 1992.

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 2d day of November 1993.

Patricia Jensen,

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-27443 Filed 11-8-93; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION The Rule

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 93-AWP-10]

#### Alteration of VOR Federal Airway V-363; CA

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

**ACTION:** Final rule.

**SUMMARY:** This action alters VOR Federal Airway V-363 by removing a segment of the airway from the Mission Bay, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Krauz intersection. This segment is not usable because of the restrictions on the Mission Bay VORTAC and because the Santa Ana, CA, Very High Frequency Omnidirectional Range (VOR) was decommissioned in 1990. A Notice to Airmen (NOTAM) has been in effect since 1990, indicating that this segment is unusable. Removing this segment will allow this NOTAM to be cancelled and will eliminate chart clutter.

**EFFECTIVE DATE:** 0901 UTC, January 6, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

#### SUPPLEMENTARY INFORMATION:

##### History

On July 16, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-363 by removing a segment of the airway from the Mission Bay, CA, VORTAC to the Krauz intersection (58 FR 38322). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

This amendment to part 71 of the Federal Aviation Regulations removes a segment of V-363 from the Mission Bay, CA, VORTAC to the Krauz intersection. This segment is not usable because of the restrictions on the Mission Bay VORTAC and because the Santa Ana, CA, VOR was decommissioned in 1990. A NOTAM has been in effect since 1990, indicating that this segment is unusable. Removing this segment will allow this NOTAM to be cancelled and will eliminate chart clutter.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

#### PART 71—[AMENDED]

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

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

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways*

\* \* \* \* \*

V-363 [Revised]

From INT Pomona, CA, 179° and Seal Beach, CA, 135° radials; to Pomona.

\* \* \* \* \*

Issued in Washington, DC, on November 1, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-27528 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 93-ANE-15]

**Revocation of Class D and Class E Airspace; Fort Devens, MA; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final rule published on September 27, 1993 (58 FR 50254). That final rule revoked the Class D airspace at Fort Devens, MA, and was prompted by the closing of the air traffic control tower (ATCT) at Moore AAF. That action was necessary because weather observation reports are no longer available from the ATCT at Moore AAF. That action should have included the Class E extension to the former Fort Devens, MA, Control Zone. This correction is necessary to include that Class E extension in the final rule.

**EFFECTIVE DATE:** 0901 UTC, November 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Taylor, Airspace Specialist, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA, 01803-5299; Telephone: (617) 238-7532.

**SUPPLEMENTARY INFORMATION:** On March 16, 1993, (58 FR 14190) the FAA proposed to revoke the Control Zone located at Fort Devens, MA due to the closure of the air traffic control tower at Moore Army Air Field (AAF). That action was necessary because weather observations were no longer available after Moore AAF closed. The FAA invited comments on the proposed rule; no comments were received. September 16, 1993, marked the effective date for the Airspace Reclassification rule (56 FR 65638, December 17, 1991), which reclassified the airspace encompassed by the former Fort Devens, MA, Control Zone as Class D airspace with a Class E extension. On September 27, 1993, (58 FR 50254) the FAA published the final rule that revoked the Class D airspace at Fort Devens, but did not also revoke the Class E extension. Accordingly, this

correction is necessary to include the Class E extension, referred to in FAA Order 7400.9A as Class E4 airspace, in the final rule revoking the airspace encompassed by the former Fort Devens, MA, Control Zone.

**Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, the publication on September 27, 1993, 58 FR 14190 and the description in FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 are corrected as follows:

**§ 71.1 [Corrected]**

On page 50255, second column, the description of the removed airspace at Fort Devens, MA, is corrected to read as follows:

*Paragraph 5000 Class D Airspace*

\* \* \* \* \*

ANE MA D Fort Devens, MA [Removed]

\* \* \* \* \*

*Paragraph 6004: Class E airspace areas designated as an extension to a Class D surface area.*

\* \* \* \* \*

ANE MA E4 Fort Devens, MA [Removed]

\* \* \* \* \*

Issued in Burlington, Massachusetts on October 19, 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93-27532 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 92-ASW-25]

**Modification of Class E Airspace: El Dorado, AR**

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E airspace at South Arkansas Regional Airport, El Dorado, AR. Twenty-four hour weather reporting is now available at South Arkansas Regional Airport. Controlled airspace from the surface is needed on a continuous basis for IFR operations at this location. This action is intended to provide adequate Class E airspace on a full-time basis.

**EFFECTIVE DATE:** 0901 UTC, January 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation,

Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-624-5531.

**SUPPLEMENTARY INFORMATION:**

**History**

On May 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone presently designated as Class E airspace at South Arkansas Regional Airport (Goodwin Field), El Dorado, AR, was published in the **Federal Register** (58 FR 26266). Contrary to circumstances in the past, twenty-four hour weather reporting is now available at South Arkansas Regional Airport, Goodwin Field. This allows for an upgrade of the airspace from part-time Class E airspace to full-time Class E airspace. This action was to extend the hours of operation from part-time to full-time, thereby providing controlled airspace from the surface for IFR operations at El Dorado, AR.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Airspace designated from the surface for an airport where there is no operating control tower is now Class E airspace. Other than the change in terminology, this amendment is the same as that proposed in the notice.

The coordinates in the proposal were North American Datum 83. Class E airspace designation as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations modifies the Class E airspace at El Dorado, AR, to provide controlled airspace from the surface for an airport without an operating control tower on a continuous basis to contain IFR operations at South Arkansas Regional Airport at Goodwin Field.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

#### PART 71—[AMENDED]

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

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

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6002: Class E airspace areas designated as a surface area for an airport.*

\* \* \* \* \*

#### ASW AR E2 El Dorado, AR [Amend]

El Dorado, South Arkansas Regional at Goodwin Field, AR (lat. 33°13'15" N., long. 92°48'48" W.)

That airspace within a 4.2-mile radius of South Arkansas Region at Goodwin Field.

\* \* \* \* \*

Issued in Fort Worth, TX, on November 2, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–27535 Filed 11–8–93; 8:45 am]

BILLING CODE 4910–13–M

#### 14 CFR Part 71

[Airspace Docket No. 92–ASW–22]

#### Revocation of Class E Airspace: Waller, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action revokes the Class E airspace at Waller, TX. The cancellation of the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 17 standard instrument approach procedure (SIAP) serving the Skylake Airport has made control of this airspace for instrument flight rule (IFR) operations unnecessary. The intent of this action is to revoke the controlled airspace extending upward from 700 feet above ground level (AGL), since it is no longer needed to contain instrument flight rule (IFR) operations at this location.

**EFFECTIVE DATE:** 0901 UTC, January 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–624–5531.

#### SUPPLEMENTARY INFORMATION:

#### History

On April 21, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a transition area at Waller, TX, was published in the Federal Register (58 FR 21411). The cancellation of the VOR/DME RWY 17 SIAP serving the Skylake Airport made control of this airspace for instrument flight rule (IFR) operations unnecessary. The intent of this action is to revoke controlled airspace extending upward from 700 feet AGL, a transition area, that is no longer needed to contain IFR operations at this location.

Concurrently with this action, the Skylake Airport will be changed from IFR operations to visual flight rules (VFR) operations only. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than the change in terminology, this amendment is the same as that proposed in the notice.

Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The

Class E airspace designation listed in this document will be removed from the Order.

#### The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class E airspace at Waller, TX, that previously provided controlled airspace from 700 feet AGL, for aircraft executing the VOR/DME RWY 17 SIAP into the Skylake Airport, Waller, TX.

The FAA has determined that this regulation only an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12886; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

#### PART 71—[AMENDED]

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

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

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

ASW TX E Skylake, TX [Removed]

\* \* \* \* \*



Issued in Fort Worth, TX, on November 2, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-27536 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 73

[Airspace Docket No. 93-ASO-12]

#### Amend Restricted Area R-6002; Poinsett-Sumter, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action amends the boundary description for Restricted Area R-6002, Poinsett-Sumter, SC, by deleting the Sumter, SC, Control Zone exclusion. As a result of the United States Airspace Reclassification, effective September 16, 1993, the term "control zone" is no longer applicable. This action corrects the boundary description for R-6002 to reflect the Airspace Reclassification. There is no change to the actual size, time of designation of R-6002, or to the types of activities conducted herein.

**EFFECTIVE DATE:** 0901 UTC, January 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9361.

#### SUPPLEMENTARY INFORMATION:

##### The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the boundary description of Restricted Area R-6002, Poinsett-Sumter, SC, by removing the words "excluding that airspace within the Sumter, SC, Control Zone." Under the U.S. Airspace Reclassification, which became effective September 16, 1993, the term "control zone" was deleted as a type of domestic airspace. This change simply deletes outdated terminology and does not, in any way, alter the existing size, change the time of designation of R-6002, or change the activities conducted in the restricted area. Because this is only an administrative change without impact on nonparticipating aircraft operation, and because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public

procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.60 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993. The coordinates for this airspace docket are based on North American Datum 83.

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

#### Environmental Review

This action does not change any of the existing parameters for or uses of Restricted Area R-6002. In addition, this action does not impact the routing of nonparticipating aircraft outside R-6002. Therefore, the FAA concludes that this action will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

#### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

#### PART 73—[AMENDED]

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 73.60 [Amended]

2. The boundaries for "R-6002 Poinsett-Sumter, SC," in § 73.60 is amended by removing the words "excluding that airspace within the Sumter, SC, control zone."

Issued in Washington, DC, on November 1, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-27529 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 73

[Airspace Docket No. 92-AWP-15]

#### Alteration and Subdivision of Restricted Area R-2510; El Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action subdivides Restricted Area R-2510 El Centro, CA, into two separate areas designated as R-2510A and R-2510B. This subdivision facilitates the release of portions of the existing restricted area for public access when military activities permit and returns a portion of the airspace to public use.

**EFFECTIVE DATE:** 0901 UTC, January 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Diane Bodenhamer, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3178.

#### SUPPLEMENTARY INFORMATION:

##### History

On July 16, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to subdivide Restricted Area R-2510, El Centro, CA, into two separate areas designated as R-2510A and R-2510B (58 FR 38323). A portion of R-2510 was proposed to be returned to public use. The FAA proposed to change the time of designation from "by NOTAM at least 24 hours in advance" to "at least 2 hours in advance." This proposal will not be incorporated; the time of designation will remain "at least 24 hours in advance." The proposed rule, in error, included a change to the using agency. The using agency will remain "U.S. Navy, Commander, Fleet Area Control and Surveillance Facility, San Diego, CA." Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A

dated March 3, 1993. The coordinates for this airspace docket are based on North American Datum 83.

#### The Rule

This amendment to part 73 of the Federal Aviation Regulations alters the existing Restricted Area R-2510 El Centro, CA, and subdivides it into two separate areas designated as R-2510A and R-2510B. R-2510A extends from the surface to 15,000 feet mean sea level (MSL) and reflects the current routine utilization of R-2510. R-2510B extends from 15,000 feet MSL to FL 400 and is activated by a Notice to Airmen (NOTAM) on weekends. R-2510B has a lower altitude ceiling (FL 400) than R-2510 (FL 500). The lateral boundaries for R-2510A and R-2510B remain encompassed within the existing boundaries of R-2510. Airspace is released to the flying public for an additional hour each day in R-2510A by shortening the time of designation from "0600-2300 local time daily; other times by NOTAM at least 24 hours in advance" to "0700-2300 local time daily; other times by NOTAM at least 24 hours in advance." Airspace above 15,000 feet MSL in R-2510B is released to the flying public an additional 87 hours per week by changing the time of designation to "by NOTAM 0700-2300 local time weekends when activated at least 24 hours in advance." This action returns a portion of the airspace to public use and does not encompass additional airspace nor change the activities within the affected restricted airspace.

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

#### Environmental Review

This action returns a portion of the affected restricted airspace to public use and does not encompass additional airspace nor change the activities within the airspace. Accordingly, this action

will have no effect on current air traffic procedures or routing of civil aircraft operations below 15,000 feet MSL in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

#### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part, 73, as follows:

#### PART 73—[AMENDED]

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 73.25 [Amended]

2. § 73.25 is amended as follows:  
R-2510 El Centro, CA [Removed].  
R-2510A El Centro, CA [New].  
Boundaries. Beginning at lat. 32°59'35" N., long. 115°43'33" W.; to lat. 32°55'35" N., long. 115°40'18" W.; to lat. 32°54'04" N., long. 115°40'18" W.; thence counterclockwise along a 4.3-mile radius circle centered at lat. 32°49'45" N., long. 115°40'18" W.; to lat. 32°50'05" N., long. 115°45'23" W.; to lat. 32°50'05" N., long. 115°55'03" W.; to lat. 32°55'50" N., long. 115°55'03" W.; to lat. 33°01'20" N., long. 116°02'18" W.; to lat. 33°06'35" N., long. 115°56'53" W.; to lat. 33°06'35" N., long. 115°51'15" W.; to the point of beginning.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. 0700-2300 local time daily; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U. S. Navy, Commander, Fleet Area Control and Surveillance Facility, San Diego, CA. R-2510B El Centro, CA [New].

Boundaries. Beginning at lat. 32°55'35" N., long. 115°40'18" W.; to lat. 32°55'50" N., long. 115°55'03" W.; to lat. 33°01'20" N., long. 116°02'18" W.; to lat. 33°06'35" N., long. 115°56'53" W.; to lat. 33°06'35" N., long. 115°51'15" W.; to lat. 32°59'35" N., long. 115°43'33" W.; to the point of beginning.

Designated altitudes. 15,000 feet MSL to FL 400.

Time of designation. By NOTAM 0700-2300 local time weekends, when activated at least 24 hours in advance.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Navy, Commander, Fleet Area Control and

Surveillance Facility, San Diego, CA.

Issued in Washington, DC, October 29, 1993.

Reginald C. Mathews,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-27527 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 91

[Amendment No. 91-232; Docket No. 27314]

#### Special Federal Aviation Regulation Number 64; Special Flight Authorizations for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of comment disposition.

**SUMMARY:** Special Federal Aviation Regulation Number 64; Special Flight Authorizations for Noise Restricted Aircraft, was published on June 3, 1993, as a final rule with a request for public comments (58 FR 31640). The rule allows certain noise-restricted aircraft to be brought into the United States without obtaining an exemption from the operating rules. This document summarizes the comments received in response to the final rule.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Laurette Fisher, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3561.

**SUPPLEMENTARY INFORMATION:** On June 3, 1993, the FAA published Special Federal Aviation Regulation No. 64 (58 FR 31640), which allows certain noise-restricted aircraft to enter the United States without obtaining an exemption to the operating rules. That rule was published with a request for comment, with the comment period ending October 1, 1993. One comment was received; the commenter concurred with the rule as published. Accordingly, no changes are being made to the rule as a result of the comment received. The comment will be placed in Docket No. 27314, and no further action will be taken. The regulatory docket is available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

Issued in Washington, DC, on November 2, 1993.

Louise E. Maillett,

Director of Environment and Energy.

[FR Doc. 93-27537 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 211

[Release No. SAB 93]

#### Staff Accounting Bulletin No. 93

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

**SUMMARY:** The interpretations in this staff accounting bulletin express certain views of the staff regarding accounting and disclosures relating to discontinued operations.

**EFFECTIVE DATE:** November 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Swormstedt, Office of the Chief Accountant (202-272-2130), or Craig Olinger, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Margaret H. McFarland,  
Deputy Secretary.

#### PART 211—[AMENDED]

Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 93 to the table found in subpart B.

#### Staff Accounting Bulletin No. 93

The staff hereby adds Section Z to Topic 5 of the Staff Accounting Bulletin Series. Topic 5-Z provides guidance regarding the accounting and disclosures relating to discontinued operations.

#### Topic 5—Miscellaneous Accounting

\* \* \* \* \*

#### Z. Accounting and Disclosure Regarding Discontinued Operations

##### 1. Method of Disposal Not Determined

**Facts:** A Company has adopted and announced a plan to discontinue a segment of a business as defined by Accounting Principles Board Opinion No. 30, "Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions" ("APB 30"). However, the Company has not determined the manner in which certain material operations will be discontinued. Disposal by sale, by spin-off, or by liquidation all remain under consideration, and estimated gain or loss on disposal would vary materially depending on the particular plan selected.

**Question 1:** Does the Company's plan satisfy the criteria of APB 30 for presentation as discontinued operations?

**Interpretive Response:** No. Paragraph 14 of APB 30 states that "[t]he plan of disposal should include, as a minimum, . . . the expected method of disposal, . . . and the expected proceeds or salvage to be realized by disposal." Plans that are not sufficiently developed to permit the determination of loss with reasonable accuracy do not satisfy the criteria of APB 30.<sup>1</sup>

##### 2. Plan of Disposal Requiring More Than One Year

**Facts:** A Company has adopted a business strategy that contemplates the sale of several businesses which, taken together, comprise a business segment as defined by APB 30. Most of the businesses are expected to be sold within twelve months, but it is likely that the remainder of the businesses will not be sold for two or three years.

**Question 2:** May the operating results of the business segment be accounted for and classified in the Company's statement of operations as discontinued operations (outside of income from continuing operations) pursuant to APB 30 as of the date that the plan of disposal was adopted?

**Interpretive Response:** No. To qualify for classification outside of continuing operations, the plan of disposal must contemplate the likely consummation of the sale, abandonment, or other disposition of all portions of the business segment within twelve months of the plan's adoption.

Paragraphs 15-17 of APB 30 require recognition at the "measurement date" (the date that management adopts a qualifying plan of disposal) of the estimated loss expected to be realized when the disposal is complete.<sup>2</sup> For this calculation, management must develop estimates of the disposal date, net proceeds from disposal, contingencies remaining after disposal, and the segment's operating results through the expected

<sup>1</sup> Notwithstanding the failure of the plan to meet the criteria of APB 30 for accounting as a discontinued operation, management should consider requirements to recognize any impairment indicated, and to disclose in MD&A the reasonably likely effects of alternative methods of disposal.

<sup>2</sup> However, as required by paragraph 15 of APB 30, if a gain is expected it should be recognized when realized, which ordinarily is the disposal date.

disposal date. Paragraph 15 states: "In the usual circumstance, it would be expected that the plan of disposal would be carried out within a period of one year from the measurement date and that such projections of operating income or loss would not cover a period exceeding approximately one year."

The staff believes that the estimates necessary for accounting for a business as discontinued cannot be developed with sufficient reliability to justify this presentation if projections beyond twelve months from the measurement date are required by the disposal plan. Furthermore, plans that do not contemplate consummation of the disposal within one year are inconsistent with the requirement in paragraph 14 of APB 30 that a qualifying plan must include "an active program to find a buyer if disposal is to be by sale." Finally, the staff believes that the reporting of operating results of a business subject to a plan of disposal as discontinued operations inaccurately portrays the Company's operating results and continuing risks if the Company expects to continue to manage that business and remain subject to its risks for a period exceeding one year.<sup>3</sup>

##### 3. Accounting for the Abandonment of a Business Segment

**Facts:** A Company adopts a formal plan to abandon a business segment through the orderly liquidation or "run-off" of its operations. The plan contemplates that the Company will cease accepting new business as of a date within twelve months of the measurement date. However, the Company is obligated by contract or regulation to continue to provide services for the periods remaining under existing agreements, and to permit renewal of contracts upon demand by the customer. The Company may continue to receive payments from customers for several years pursuant to the terms of outstanding contracts, and will incur significant operating costs in future periods to fulfill its obligations under the contracts.

**Question 3:** May the wind-down of the business segment be accounted for as a discontinued business pursuant to APB 30 as of the date that the Company adopts its formal plan?

**Interpretive Response:** Yes. If the acceptance of new business (other than that which the Company is obligated by contract or regulation to accept) will cease within twelve months of the date that the formal plan is adopted, the staff will not object to accounting for the abandonment as a discontinued business as of the plan adoption date if operating results through the final termination can be estimated with reasonable accuracy. However, in reporting periods in which the residual operations of

<sup>3</sup> If management changes its plans and decides not to sell a business that has been accounted for as a discontinued operation, registrants should apply the guidance in the Emerging Issues Task Force (EITF) consensus for Issue No. 90-16. If, notwithstanding management's reasonable expectations, disposal of the business is not completed within a year of the measurement date, registrants are expected to apply the guidance in the EITF consensus for Issue No. 90-6 concerning businesses held for sale that were acquired in a business combination.

the discontinued business are material relative to continuing operations, a note to the financial statements should include summarized disclosure of its operating results (e.g., revenues, costs of revenues, other expenses) and of the material elements of charges and credits to income recognized currently to adjust the estimate of loss recognized at the measurement date.

#### 4. Disposal of Operation With Significant Interest Retained

**Facts:** A Company disposes of its controlling interest in a business segment as defined by APB 30. The Company retains a minority voting interest directly in the segment or it holds a minority voting interest in the buyer of the segment. Because the Company's voting interest enables it to exert significant influence over the operating and financial policies of the investee, the Company is required by Accounting Principles Board Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," to account for its residual investment using the equity method.<sup>4</sup>

**Question 4:** May the historical operating results of the segment and the gain or loss on the sale of the majority interest in the segment be classified in the Company's statement of operations as "discontinued operations" pursuant to APB 30?

**Interpretive Response:** No. The staff believes that retention of an interest sufficient to enable the Company to exert significant influence over the segment's operating and financial policies is indicative of a level of continuing involvement with the segment that is inconsistent with its classification as a discontinued operation. In these circumstances, the transaction should be accounted for as the disposal of a portion of a line of business with its effects classified within continuing operations pursuant to the AICPA Accounting Interpretations to APB 30, "Reporting the Results of Operations."<sup>5</sup>

#### 5. Classification and Disclosure of Contingencies Relating to Discontinued Operations

**Facts:** A Company disposed of a business segment in a previous accounting period. The Company received debt and/or equity securities of the buyer of the segment or of the disposed segment as consideration in the sale, but this financial interest does not enable the Company to exert significant influence over the buyer. The Company made certain warranties to the buyer with respect to the discontinued business, or remains liable under environmental or other laws with respect to certain facilities or operations transferred to the buyer. The disposition satisfied the criteria of APB 30 for presentation as "discontinued operations." The Company estimated the fair value of the

securities received in the transaction for purposes of calculating the gain or loss on disposal that was recognized in its financial statements. The results of discontinued operations prior to the measurement date included provisions for the Company's existing obligations under environmental laws, product warranties, or other contingencies. The calculation of gain or loss on disposal included estimates of the Company's obligations arising as a direct result of its decision to dispose of the segment, under its warranties to the buyer, and under environmental or other laws. In a period subsequent to the disposal date, the Company records a charge to income with respect to the securities because their fair value declined materially and the Company determined that the decline was other than temporary. The Company also records adjustments of its previously estimated liabilities arising under the warranties and under environmental or other laws.

**Question 5:** Should the writedown of the carrying value of the securities and the adjustments of the contingent liabilities be classified in the current period's statement of operations within continuing operations or as an element of discontinued operations?

**Interpretive Response:** Adjustments of estimates of contingent liabilities or contingent assets that remain after disposal of a business or that arose pursuant to the terms of the disposal generally should be classified within discontinued operations. However, the staff believes that changes in the carrying value of assets received as consideration in the disposal or of residual interests in the business should be classified within continuing operations.

Paragraph 25 of APB 30 requires that "each adjustment in the current period of a loss on disposal of a business segment . . . that was reported in a prior period" be classified in the same manner as the original item. The staff believes that the provisions of paragraph 25 apply only to adjustments that are necessary to reflect new information about events that have occurred that becomes available prior to disposal of the business, to reflect the actual timing and terms of the disposal when it is consummated, and to reflect the resolution of contingencies associated with that business, such as warranties and environmental liabilities retained by the seller.

Developments subsequent to the disposal date that are not directly related to the disposal of the segment or the operations of the segment prior to disposal do not constitute "circumstances attendant to disposal" as contemplated by paragraph 25. Subsequent changes in the carrying value of assets received upon disposition of a segment do not affect the determination of gain or loss at the disposal date, but represent the consequences of management's subsequent decisions to hold or sell those assets. Gains and losses, dividend and interest income, and portfolio management expenses associated with assets received as consideration for discontinued operations should be reported within continuing operations.

**Question 6:** What disclosures would the staff expect regarding discontinued

operations prior to the disposal date and with respect to risks retained subsequent to the disposal date?

**Interpretive Response:** Management's Discussion and Analysis (MD&A)<sup>6</sup> should include disclosure of known trends, events, and uncertainties involving discontinued operations that may materially affect the Company's liquidity, financial condition, and results of operations (including net income) between the measurement date and the date when the risks of those operations will be transferred or otherwise terminated. Disclosure should include discussion of the impact on the Company's liquidity, financial condition, and results of operations of changes in the plan of disposal or changes in circumstances related to the plan. Material contingent liabilities, such as product or environmental liabilities or litigation, that may remain with the Company notwithstanding disposal of the underlying business should be identified in notes to the financial statements and any reasonably likely range of possible loss should be disclosed pursuant to Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies." MD&A should include discussion of the reasonably likely effects of these contingencies on reported results and liquidity. If the Company retains a financial interest in the discontinued business or in the buyer of that business that is material to the Company, MD&A should include discussion of known trends, events, and uncertainties, such as the financial condition and operating results of the issuer of the security, that may be reasonably expected to affect the amounts ultimately realized on the investments.

#### 6. Accounting for Subsidiaries That Management Intends To Sell

**Facts:** A Company has adopted a business strategy that contemplates the sale of one or more subsidiaries of the Company. The Company determines that it cannot account for the subsidiaries as discontinued operations pursuant to APB 30 because disposition of the subsidiaries is not likely to be complete within a year or because the business strategy does not otherwise qualify as a "formal plan of disposal" under APB 30. However, in light of its business strategy, the Company believes control of the subsidiaries is "likely to be temporary." Statement of Financial Accounting Standard No. 94, "Consolidation of All Majority-Owned Subsidiaries" ("SFAS 94"), states that a subsidiary shall not be consolidated if control is likely to be temporary.

**Question 7:** Must the subsidiaries that the Company intends to sell be consolidated in the Company's financial statements?

**Interpretive Response:** Yes, ordinarily. The staff believes the concept of temporary control, established originally in Accounting Research Bulletin No. 51 and retained without modification in SFAS 94, does not encompass situations involving planned dispositions of subsidiaries. APB 30 governs the accounting for planned dispositions of subsidiaries, as well as divisions and lesser components of businesses.

<sup>4</sup> In some circumstances, the seller's continuing interest may be so great that divestiture accounting is inappropriate. See SAB Topic 5-E.

<sup>5</sup> However, a plan of disposal that contemplates the transfer of assets to a limited-life entity created for the single purpose of liquidating the assets of a line of business would not necessitate classification within continuing operations solely because the registrant retains control or significant influence over the liquidating entity.

<sup>6</sup> Item 303 of Regulation S-K. 17 CFR 229.303.

SFAS 94 requires consolidation of majority owned investees except in two circumstances. One exception is that subsidiaries must be excluded from consolidation if control "does not rest with the majority owner (as, for instance, if the subsidiary is in legal reorganization or in bankruptcy or operates under foreign exchange restrictions, controls, or other governmentally imposed uncertainties so severe that they cast significant doubt on the parent's ability to control the subsidiary)." The other exception is that consolidation of a subsidiary is proscribed by SFAS 94 if control presently rests with the majority owner, but control is likely to be temporary. The staff believes this second exception to consolidation is applicable only if control is likely to be lost in the near term as a result of the probable occurrence of events that lie outside of the Company's control.<sup>7</sup>

The staff believes that APB 30 governs the accounting for all planned dispositions of operations, including planned dispositions of subsidiaries. De-consolidation of subsidiaries that do not constitute a segment of business is not contemplated by APB 30. If operations subject to a qualifying plan of disposal do not comprise a business segment as defined by APB 30, that standard prohibits the reporting of the component's operating results as discontinued operations. The component's operating results should be measured and reported in accordance with AICPA Accounting Interpretations of APB 30. Even if the operations comprise a business segment, the presentation prescribed by APB 30 is not identical to the presentation that would result from de-consolidation. The staff believes that, until a plan of disposal satisfying the criteria of APB 30 is adopted by management, subsidiaries (which may comprise either a business segment or a portion of a line of business) should continue to be consolidated in the Company's financial statements unless matters outside the control of the registrant are indicative that control does not rest with the registrant or is likely to be lost.

#### 7. Accounting for the Spin-Off of a Subsidiary

Facts: A Company disposes of a business through the distribution of a subsidiary's stock to the Company's shareholders on a pro rata basis in a transaction that is referred to as a spin-off.

Question 8: May the Company elect to characterize the spin-off transaction as resulting in a change in the reporting entity and restate its historical financial statements as if the Company never had an investment in the subsidiary, in the manner specified by paragraph 34 of APB Opinion No. 20?

Interpretive Response: Not ordinarily. If the Company was required to file periodic reports under the Exchange Act within one year prior to the spin-off, the staff believes the Company should reflect the disposition in conformity with APB 30. This presentation

most fairly and completely depicts for investors the effects of the previous and current organization of the Company. However, in limited circumstances involving the initial registration of a company under the Exchange Act or Securities Act, the staff has not objected to financial statements that retroactively reflect the reorganization of the business as a change in the reporting entity if the spin-off transaction occurs prior to effectiveness of the registration statement. This presentation may be acceptable in an initial registration if the Company and the subsidiary are in dissimilar businesses, have been managed and financed historically as if they were autonomous, have no more than incidental common facilities and costs, will be operated and financed autonomously after the spin-off, and will not have material financial commitments, guarantees, or contingent liabilities to each other after the spin-off.

[FR Doc. 93-27561 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket Nos. 90N-0135 and 91N-0162]

RIN 0905-AD08

#### Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label; Technical Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the *Federal Register* of August 18, 1993 (58 FR 44063). The document responded to technical comments that the agency received and corrected inconsistencies

and unintended technical consequences of the regulations that require nutrition labeling on most foods that are regulated by FDA. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5763.

In FR Doc. 93-19259, appearing on page 44063, in the *Federal Register* of Wednesday, August 18, 1993, the following corrections are made:

1. On page 44063, in the third column, in line 2, the docket number "90N-0134" is corrected to read "90N-0135"; and under the caption "FOR FURTHER INFORMATION CONTACT:", in line 5, the telephone number "202-205-4561" is corrected to read "202-205-5763".

2. On page 44070, in the second column, in the 5th line from the bottom, "\$ 101.9(j)(i) through (j)(iii)" is corrected to read "\$ 101.9(j)(2)(i) through (j)(2)(iii)".

3. On page 44075, in the second column, in the third full paragraph, beginning in line 5, "(21 CFR 101.1(c) and 101.2(c)(1))" is corrected to read "(21 CFR 101.1(c) and 101.2(a)(1))".

#### § 101.9 [Corrected]

The following corrections are made in § 101.9 *Nutrition labeling of food*:

4. On page 44084, in the third column, in paragraph (j)(13)(ii)(A)(1), in line 2, " \* \* " is removed; and in the first column, in paragraph (j)(13)(ii)(B), in line 9, "olyunsat" is corrected to read "polyunsat".

5. On page 44089, Appendix D, the sample label "Simplified Linear Display" is corrected to read as follows:

## Simplified Linear Display

<p><b>Nutrition Facts</b> Serv size: 3 pieces (6g), Servings: 4, Amount Per Serving : Calories 20, Total Fat 0g (0% DV), Sodium 20mg (1% DV), Total carb. 5g (2% DV), Sugars 5g, Protein 0g, Percent Daily Value (DV) are based on a 2,000 calorie diet.</p>
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<sup>7</sup> A registrant may determine not to consolidate a subsidiary of an acquired company at the time it is acquired in a business combination if the subsidiary will be sold within a year after the acquisition. In these circumstances, the registrant should follow the guidance in the EITF consensus for Issue 87-11.

Dated: November 3, 1993.

Michael R. Taylor,  
Deputy Commissioner for Policy.

[FR Doc. 93-27446 Filed 11-8-93; 8:45 am]

BILLING CODE 4160-01-F

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

RIN 0720-AA17

**Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Partial Hospitalization**

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; Delay of grace period.

**SUMMARY:** This document is to advise interested parties that the Director, OCHAMPUS is extending the grace period for partial hospitalization programs (PHPs) already accredited under the Joint Commission on Accreditation of Health Care Organizations (JCAHO) general hospital standards to obtain JCAHO accreditation under the Mental Health Manual. Due to the number of PHPs requesting JCAHO accreditation, an extension of the grace period is needed to allow sufficient time for PHPs to receive the mandatory JCAHO accreditation.

EFFECTIVE DATE: November 9, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Martha M. Maxey, Health Care Policy Analyst, Program Development Branch, Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Aurora, Colorado 80045-6900, telephone (303) 361-1227.

**SUPPLEMENTARY INFORMATION:** On July 1, 1993 (58 FR 35400), the Department of Defense published a final rule on partial hospitalization. Included in the final rule was a one-time grace period for PHPs already accredited under the JCAHO general hospital standards to obtain JCAHO accreditation under the Mental Health Manual by April 1, 1994.

The grace period for PHPs requesting JCAHO accreditation is extended until October 1, 1994.

Dated: November 4, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-27494 Filed 11-8-93; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard.****33 CFR Parts 2 and 3**

[CGD 93-020]

RIN 2115-AD82

**Captain of the Port Zone Boundaries; Correction**

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

**SUMMARY:** This document contains a correction to the final rule (CGD 93-020) which was published Monday, October 4, 1993, (58 FR 51726). The regulations related to extending the Coast Guard Captain of the Port (COTP) zone boundaries seaward to the limit of the Exclusive Economic Zone (EEZ).

EFFECTIVE DATE: November 9, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Mary-Jo Cooney Spottswood, Project Manager and Project Counsel, Oil Pollution Act (OPA 90) Staff, (202) 267-6402.

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

The final rule that is the subject of this correction extended the COTP zone boundaries to the seaward limit of the EEZ and made changes to the onshore boundaries of several COTP zones.

**Need for Correction**

A clarification of the boundaries of the San Diego COTP zone is necessary.

**Correction of Publication**

Accordingly, the publication on October 4, 1993, of the final rule (CGD 93-020), which is the subject of FR Doc. 93-24206, is corrected as follows:

**§ 3.55-15 [Corrected]**

1. On page 51731, in the first column at line 42, § 3.55-15(b) should read:

\* \* \* \* \*

(b) The San Diego Marine Inspection Zone and Captain of the Port Zone comprise the land masses and waters of Arizona; in Utah, Washington, Kane, San Juan, and Garfield Counties; in Nevada, Clark County; and in California, San Diego and Imperial Counties. The offshore boundary, which includes all ocean waters and islands contained therein, starts at the intersection of the Orange-San Diego County lines (approximately 33°22.5' N. latitude) and the California coast and proceeds seaward on a line bearing 255 T° to the outermost extent of the EEZ; thence proceeds southerly along the outermost extent of the EEZ to the intersection of

the maritime boundary with Mexico; thence easterly, along the maritime boundary with Mexico to its intersection with the California coast.

Dated: November 3, 1993.

R.C. North,

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

[FR Doc. 93-27566 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR 162**

[CGD 93-024]

RIN 2115-AE50

**Alternating One Way Traffic Zone Restrictions in the Blue Water Bridge Area of St. Clair River**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is amending the rule affecting the class of vessels to which navigation restrictions are applicable in the Blue Water Bridge area of the St. Clair River. This final rule will lift these navigation restrictions from power driven vessels less than 55 meters in length, without a tow. Further, the final rule will impose these navigation restrictions on all vessels engaged in towing another vessel astern, alongside, or by pushing ahead, regardless of the size of the towing vessel. These changes will decrease transit time through this area while generally improving vessel navigation safety.

EFFECTIVE DATE: March 15, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Irene Hoffman, Project Manager, Vessel Traffic Services Division. The telephone number is 202-267-6277.

**SUPPLEMENTARY INFORMATION:****Drafting Information**

The principal persons involved in drafting this document are Irene Hoffman, Project Manager, Vessel Traffic Services Division and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

**Regulatory History**

On August 12, 1993, the Coast Guard published a notice of proposed rulemaking amending the class of vessels affected by the St. Clair River navigation restrictions entitled, "Alternating One Way Traffic Zone Restrictions in the Blue Water Bridge Area of St. Clair River" in the *Federal Register* (58 FR 42913). The Coast Guard received three letters commenting on

the proposal. A public hearing was not requested and one was not held.

#### Background and Purpose

All entities involved consider the present one way traffic zone regulations in the Blue Water Bridge area to be too restrictive on vessel traffic. This final rule incorporates suggestions expressed by the Lake Carriers' Association, the Canadian Shipowner's Association, the Canadian Coast Guard's Central Region Marine Advisory Council, the Ninth U.S. Coast Guard District, and the Detroit St. Clair River Working Group.

The Canadian Coast Guard operates a Vessel Traffic Service (VTS) at Sarnia, Ontario, Canada (call sign "Sarnia Traffic"). Due to this VTS, the proximity of the subject area with Canada and shared waterways, this regulatory project amounts to a cooperative international effort. The Canadian Government is amending its corresponding regulation and expects it to be effective for the start of the 1994 navigation season on March 15, 1994.

#### Discussion of Comments and Changes

The Coast Guard received three letters encouraging the amendments to the class of vessels to which navigation restrictions are applicable in the Blue Water Bridge area of the St. Clair River. All comments concurred that this final rule will alleviate transit delays in this area by changing the class of vessels to which these traffic restrictions apply. At present, 33 CFR 162.134(c)(2) imposes an alternating one way traffic zone in the Blue Water Bridge area of the St. Clair River. Under this restriction, vessels of 20 meters or more in length and vessels 8 meters or more in length engaged in towing (33 CFR 162.130(b)(3)) may not overtake, come about, or meet within this traffic zone. This rule will lift these restrictions from power driven vessels less than 55 meters in length, without a tow. These regulations will still apply to dredges, floating plants, sailing vessels of 20 meters or more in length, and power driven vessels of 55 meters or more in length.

The Coast Guard has determined that allowing power driven vessels less than 55 meters in length, without a tow, to navigate freely in this area will facilitate shipping schedules that have historically been delayed because of these navigation restrictions. As two comments suggested, it will not increase the risk of collision nor compromise vessel safety.

This final rule will also impose these navigation restrictions on all vessels engaged in towing another vessel astern, alongside, or pushing ahead, rather than

only commercial vessels greater than 8 meters engaged in towing. This final rule is being enacted because the act of towing is the more important navigational safety issue, not the length of the towing vessel. Towing reduces the maneuverability of vessels and increases the risk of collision. This rule will also be more closely aligned with the corresponding Canadian regulations.

#### Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation is unnecessary. The final rule reduces the overall number of individuals or entities affected. The expected cost to comply with the rule should not be significantly greater than the cost of complying with the existing regulations.

#### Small Entities

The final rule reduces the overall number of individuals or entities affected by the existing regulations. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This final 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 final 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 further Federalism Assessment. This rule establishes certain navigation rules for a waterway along an international border. The authority to regulate concerning the navigable waterways of the United States is committed to the Coast Guard by Statute. The Coast Guard intends this rule to preempt state action addressing the same matter, although no such action is expected.

#### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section

2.B.2(1) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as a procedural regulation which clearly does not have any environmental impacts. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 162

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 162 as follows:

#### PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 162.130 the introductory text of paragraph (b)(3) is revised and paragraph (b)(4) is added to read as follows:

#### § 162.130 Connecting waters from Lake Huron to Lake Erie; general rules.

(a) \* \* \*

(b) \* \* \*

(3) The communication rules in § 162.132, the traffic rules in § 162.134, except for § 162.134(c)(2), and the anchorage rules in § 162.136 apply to the following vessels: \* \* \*

(4) The traffic rules contained in § 162.134(c)(2) apply to the following vessels:

- (i) Sailing vessels of 20 meters or more in length;
- (ii) Power driven vessels of 55 meters or more in length;
- (iii) Vessels engaged in towing another vessel astern, alongside or by pushing ahead; and
- (iv) Each dredge and floating plant.

\* \* \* \* \*  
Dated: October 27, 1993.

W.J. Ecker,  
Rear Admiral, U.S. Coast Guard, Chief, Office  
of Navigation Safety and Waterway Services.  
[FR Doc. 93-27567 Filed 11-8-93; 8:45 am]  
BILLING CODE 4910-14-M

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

RIN 2900-AG57

#### Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning procedural due process and appellate rights. This amendment is necessary to implement statutory changes concerning the content of the notice to a claimant when benefits sought are denied. The intended effect of this amendment is to bring the regulations into conformance with the statutory requirements.

**EFFECTIVE DATE:** This amendment is effective November 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** 38 U.S.C. 5104(b) provides that when the Secretary of Veterans Affairs denies a benefit sought, the notification to the claimant (and to the claimant's representative) of that decision must include a statement of the reasons for the denial of benefits and a summary of the evidence considered in reaching that decision. This requirement is not clearly reflected in the regulations at 38 CFR 3.103 concerning procedural due process and appellate rights. 38 CFR 3.103(f) stipulates that a claimant or beneficiary and his or her representative will be notified in writing concerning decisions that affect the payment of benefits or granting of relief and describes the content of such a notification, but does not specify the content of the notification when benefits sought are denied. We have amended 3.103(f) accordingly.

VA is issuing a final rule to implement this statutory requirement. Because this amendment implements a statutory provision, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 22, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

**PART 3—ADJUDICATION****Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.103, paragraph (f) has been revised, and an authority citation added, to read as follows:

**§ 3.103 Procedural due process and appellate rights.**

\* \* \* \* \*

(f) *Notification of decisions.* The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting relief. All notifications will advise the claimant of the reason for the decision; the date the decision will be effective; the right to a hearing subject to paragraph (c) of this section; the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal; and the periods in which an appeal must be initiated and perfected (See part 20 of this chapter, on appeals). Further, any notice that VA has denied a benefit sought will include a summary of the evidence considered.

(Authority: 38 U.S.C. 5104)

[FR Doc. 93-27470 Filed 11-8-93; 8:45 am]

**BILLING CODE** 8320-01-U

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 51**

[FRL-4686-1]

**Inspection/Maintenance Program Requirements; Correcting Amendments**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations,

Inspection/Maintenance Program Requirements, which were published Thursday, November 5, 1992, (57 FR 52950). The regulation establishes performance standards and other requirements for basic and enhanced vehicle inspection and maintenance (I/M) programs contained in the 40 CFR part 51.

**EFFECTIVE DATE:** This correction will take effect on November 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Eugene J. Tierney (313) 668-4456.

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

The authority for the final regulations that are the subject of this correcting amendment, is granted to the Environmental Protection Agency (EPA) by sections 182(a), 182(b), 182(c), 184(b), 187(a) and 118 of the Clean Air Act as amended (42 U.S.C. 7401 et seq).

EPA finds there is good cause to make this correction effective immediately because it merely corrects minor technical errors in the originally promulgated rule, and does not impose any independent requirements.

**Need for Correcting Amendment**

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. The errors are not substantial nor of a technical basis as to change the original intent of the rule. Four of the corrections made in this rule need an explanation.

In § 51.351, when referring to emission standards for light-duty vehicles and light-duty trucks under 6,000 pounds GVWR and greater than 6,000 pounds GVWR meeting Tier 1 emission standards, the rule incorrectly refers to non-methane hydrocarbons, when, in fact the IM240 test procedure measures for total hydrocarbons, not non-methane hydrocarbons. The other standards listed here are all total hydrocarbon standards. The numerical levels of the standards are logical as total hydrocarbon standards, given the performance capability of the vehicles in question. The inclusion of the term non-methane hydrocarbons erroneously implies that measurement of non-methane is required. This was not the intent of the rule. The word "non-methane" and its acronym are being removed.

In § 51.360, the word "not" was inadvertently omitted from paragraph (a)(8). It is being added. The explanation of this provision on page 52964 of the preamble to the rule made the intent of this provision clear that it was to apply



to vehicles that do not meet the standard.

In § 51.373, a sentence is being added to paragraph (b) to make clear EPA's intent, described in the preamble to the rule on page 52971, that all basic I/M areas are allowed the additional time to meet the deadlines when opting to do enhanced I/M programs.

In Appendix A to subpart S, in paragraph (I)(c), the number "5,000" is being corrected to read "4,000" so that it is consistent with the section on quality assurance, § 51.363, on page 52997. Beginning with paragraph (4)(i) of this section, remote visual observation of inspector performance, high-volume stations are referred to as those performing more than 4,000 tests per year.

In Appendix D to subpart S on page 53013 under (I)(b)(1), an additional row needs to be inserted as the first row under the headings of the table. This text was inadvertently omitted from the final version.

On page 53013, in the third column, the title of the table "Section" should be corrected to read "Second".

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 6, 1993.

Carol M. Browner,  
Administrator.

For the reasons set out in the preamble, part 51 of chapter I, title 40 of the Code of Federal Regulations is amended as follows.

**PART 51—[AMENDED]**

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

Authority: 42 U.S.C. 7401-7671.

2. Section 51.351 is amended by revising paragraphs (a)(7)(iv) through (a)(7)(vi)

**§ 51.351 Enhanced I/M performance standard.**

(a) \* \* \*

(7) \* \* \*

(iv) Emission standards for 1994 and later light duty vehicles meeting Tier 1 emission standards of 0.70 gpm HC, 15 gpm CO, and 1.4 gpm NO<sub>x</sub>.

(v) Emission standards for 1994 and later light duty trucks under 6000 pounds GVWR and meeting Tier 1 emission standards of 0.70 gpm HC, 15 gpm CO and 2.5 gpm NO<sub>x</sub>;

(vi) Emission standards for 1994 and later light duty trucks greater than 6000 pounds GVWR and Tier 1 emission standards of 0.80 gpm HC, 15 gpm CO and 2.5 gpm NO<sub>x</sub>;

\* \* \* \* \*

**§ 51.353 [Amended]**

3. In § 51.353, paragraph (a) is amended by revising the word "barrel" to read, "barred".

\* \* \* \* \*

**§ 51.359 [Amended]**

4. In § 51.359, in the first sentence of paragraph (e)(1), the word "ultra-violet" is revised to read, "ultra-violet".

5. Section 51.360 is amended by revising paragraph (a)(8) to read as follows:

**§ 51.360 Waivers and compliance via diagnostic inspection.**

\* \* \* \* \*

(a) \* \* \*

(8) States may establish lower minimum expenditures if a program is established to scrap vehicles that do not meet standards after the lower expenditure is made.

\* \* \* \* \*

6. Section 51.373 is amended by adding a sentence to the end of paragraph (a) to read as follows:

**§ 51.373 Implementation deadlines.**

\* \* \* \* \*

(a) \* \* \* More implementation time may be approved by the Administrator if an enhanced I/M program is implemented.

\* \* \* \* \*

7. Appendix A is amended by revising the first sentence of paragraph (I)(c) to read as follows:

**Appendix A to Subpart S—Calibrations, Adjustments and Quality Control**

(I) \* \* \*

(c) \* \* \* A system leak check shall be performed within twenty-four hours before the test in low volume stations (those performing less than 4,000 inspections per year) and within four hours in high-volume stations (4,000 or more inspections per year) and may be performed in conjunction with the gas calibration as described in paragraph (I)(d)(1) of this appendix. \* \* \*

\* \* \* \* \*

8. In appendix D the table in paragraph (I)(b)(1) is amended by adding as the first entry "HC, ppm" to read as follows:

**Appendix D to Subpart S—Steady-State Short Test Equipment**

\* \* \* \* \*

(I) \* \* \*

(b) \* \* \*

(1) \* \* \*

Channel	Range	Accuracy	Noise	Repeatability
HC, ppm	0-400	±12	6	8

**Appendix E to Subpart S—[Amended]**

9. In appendix E in the heading, in the first column of the table the word "Section" is revised to read "Second".

[FR Doc. 93-27417 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 271**

[FRL-4798-6]

**State of Florida; Final Authorization of Revisions to State Hazardous Waste Management Program**

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery

Act (RCRA). Florida's revisions consist of the provisions contained in the rules promulgated between November 8, 1984, and June 30, 1987, otherwise known as HSWA Cluster I as well as three technical corrections found in HSWA Cluster II. Florida is not applying for the corrective action component of HSWA Cluster I. The requirements are listed in Section B of this document. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that Florida's hazardous

waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revision is available for public review and comment.

**DATES:** Final authorization for Florida's program revisions is effective January 10, 1994. Unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business, December 9, 1993.

**ADDRESSES:** Written comments should be sent to A.R. Hanke, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. EPA, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, Phone 904-488-0300; U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone 404-347-4216.

**FOR FURTHER INFORMATION CONTACT:** A.R. Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. EPA, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone 404-347-2234.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

States with final authorization under section 3006(b) of the Resource

Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268 and 270.

**B. State of Florida**

Florida initially received final authorization for its base RCRA program effective on February 12, 1985, (50 FR 3908, January 29, 1985). Florida received authorization for revisions to its program on April 6, 1992, for Non-HSWA III, IV and V. Today Florida is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous

waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision up until December 9, 1993. Copies of Florida's application for these program revisions are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this document.

Approval of Florida's program revisions shall become effective January 10, 1994, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is today seeking authority to administer the following Federal requirements.

Checklist	Description	FR date and page	Florida rule
Nonchecklist .....	Surface impoundment requirements.	Statutory HSWA §3005(j), §3004(d).	403.704(16), 403.704(28), 403.722(7), FS 17-730.230(2)(b) & (8).
Nonchecklist .....	Exceptions to the burning and blending of hazardous waste.	HSWA §3004(q)(2)(A), §3004(r)(2) & (3).	403.721(7).
Nonchecklist .....	Hazardous and used oil fuel criminal penalties.	HSWA §3006(h), §3008(d), §3014.	403.727 FS 17-730.181.
Nonchecklist .....	Exposure information and health assessments.	HSWA 3019(b) .....	403.061(21), 403.704(2) FS.
14 .....	Dioxin waste listing and management standards.	1/14/85, 50 FR 1978 .....	403.72(1), 403.721(2) & (6)(b)-(f), 403.722(3) & (4) 17-730.030(1), 180(1) & 220(3).
16 .....	Paint filter test .....	4/30/85, 50 FR 18370 .....	403.721(2) & (6), 17-730.180(1) & (2).
17A, 17C-17K, 17M-17S .....	HSWA codification rule .....	7/15/85, 50 FR 28702 .....	403.72(1), 721, 704, 722, 7222**, 751, 061, 7221, 17-4.050, 17-730.030, 160, 180, 220, 231, 030, 181, 250, 290, 300, 070, 280, 230, 240, 150 & 330.
18 .....	Listing of TDI, TDA, DNT .....	10/23/85, 50 FR 42936 .....	403.72(1), 17-730.030(1).
19 .....	Burning of waste fuel and used oil fuel in boilers and industrial furnaces.	11/29/85, 50 FR 49164 .....	403.72(1) & 721, 17-730.030(1), 180 & 181.
20 .....	Listing of spent solvents .....	12/31/85, 50 FR 53315 .....	403.72(1), 17-730.030.
21 .....	Listings of EDB wastes .....	1/21/86, 51 FR 2702 .....	403.72(1); 17-730.030.
		2/13/86, 51 FR 5327 .....	

Checklist	Description	FR date and page	Florida rule
22	Listings of four spent solvents	2/25/86, 51 FR 6537	403.72(1), 17-730.030.
23*	Generators of 100-1,000 kg hazardous waste.	3/24/86, 51 FR 10146	403.704, 72, 721 & 722, 17-730.020, 030, 160, 170 & 220.
25**	Codification rule, technical correction.	5/28/86, 51 FR 19176	403.721, 7222, 17-730.180.
30	Biennial report correction	8/8/86, 51 FR 28556	403.721, 17-730.180.
31	Exports of haz. waste	8/8/86, 51 FR 28664	403.72(1), 721 & 704, 17-730.030, 160, 170.
32	Standards for generators—waste minimization certs.	10/1/86, 51 FR 35190	403.721, 17-730.160.
33	Listing of EBDC	10/24/86, 51 FR 37725	403.72, 17-730.030.
34***	Land disp. restrictions	11/7/86, 51 FR 40572	FS 403.704, 72, 73, 721, 722 & 73, 101, 102, 17-730.030, 160, 170, 180, 183, 220, 001, 310, 020, 280, 290, 119 & 17-4.080.
47 HSWA Cluster II	Identification and listing of haz. waste technical correction.	7/19/88, 53 FR 27162	403.72, 17-730.030.
48**** HSWA Cluster II	Farmer exemptions; technical corrections.	7/19/88, 53 FR 27164	403.721, 17-730.160, 180, 183.
77 HSWA Cluster II	HSWA codification rule, double liners; correction.	5/9/90, 55 FR 19262	403.721, 17-730.180.

\*Reference § 263.20(h)—Florida also imposes the transporter financial requirements of rule 17-730.170(2) F.A.C. as required by 403.721(4)(a), F.S., therefore, Florida is more stringent.  
 Reference § 262.34(e)—Florida does not adopt § 262.34(e) which allows a greater accumulation time for wastes that have to be transported over 200 miles. Therefore, Florida is more stringent.  
 Reference § 262.34(f)—Florida adopts this rule with the provision described in 17-730.160(3) that on-site accumulation for up to 270 days does not apply. Therefore, Florida is more stringent.  
 Reference 40 CFR 262.34(f)—Florida adopts this rule by reference which contains the same exclusion as 40 CFR 270.1(c)(2)(i). Florida does not allow on-site accumulation for up to 270 days if a generator must transport the waste over a distance of 200 miles or more. Florida allows on-site accumulation of not more than 180 days to qualify for the permit exclusion. Therefore, Florida is more stringent.  
 \*\*Florida statutes in 403.7222, F.S.—prohibit hazardous waste landfills except in an officially declared emergency. Therefore, Florida is more stringent.  
 Reference § 270.50(d)—Florida requires renewal of all permits, not just land disposal permits. Therefore, Florida is more stringent.  
 \*\*\*Reference § 263.12—Florida imposes the additional transfer facility requirements of rule 17-730.171, F.A.C. Therefore, Florida is more stringent.  
 Reference §§ 260.1(b)(4) and 260.20(a)—Florida does not adopt § 260.20 and does not do delisting petitions.  
 \*\*\*\*40 CFR 268.1(c)(5) no longer exists, the farmer exemption was moved to § 268.1(e)(2).

The State of Florida has certified that its authority to regulate the revised program set forth in HSWA Cluster I and a portion of HSWA Cluster II is equivalent to, and no less stringent than, federal requirements of the RCRA at 40 CFR parts 260, 261, 264, 265 and 270 and sections 1006, 3001 through 3007, 3010, 3014 through 3019, and 7004 of RCRA.

**C. Decision**

I conclude that Florida's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

**Compliance With Executive Order 12866**

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicate requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential Business Information, Hazardous materials, Transportation, Hazardous waste, Indian lands, Intergovernmental relation, Penalties, Reporting and recordkeeping

requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

**Patrick M. Tobin,**  
*Acting Regional Administrator.*  
 [FR Doc. 93-27599 Filed 11-8-93; 8:45 am]  
**BILLING CODE 6560-50-P**

**40 CFR Part 300**

[FRL-4799-2]

**National Oil and Hazardous Substances Contingency Plan; National Priorities List Update**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Hydro-Flex Corporation, Inc., site from the national priorities list (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) Region VII announces the deletion of the Hydro-Flex Corporation, Inc. Site from the NPL. The NPL is appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. EPA and the State of Kansas have determined that no cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Site to date have been protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** November 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Catherine Barrett, Remedial Project Manager, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7003, or Hattie Thomas, Community Relations Coordinator, at the same address and phone number as noted above.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Hydro-Flex Corporation, Inc. Site, Topeka, Kansas.

A notice of Intent to Delete for this Site was published April 12, 1993. The closing date for comments on the Notice of Intent to Delete was May 13, 1993. EPA did not receive any comments on the proposed deletion.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL, as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL should future conditions warrant such actions. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**William W. Rice,**

*Acting Regional Administrator, USEPA, Region 7.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows.

#### PART 300—[AMENDED]

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

**Authority:** 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 5457, 3 CFR,

1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

#### Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Hydro-Flex Corporation, Inc., Topeka, Kansas" and by revising the total number of sites from "1,076" to read "1,075".

[FR Doc. 93-27604 Filed 11-8-93; 8:45 am]

**BILLING CODE 6560-60-M**

#### 40 CFR Part 271

[FRL-4798-8]

#### New Jersey: Final Authorization of State Hazardous Waste Program Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** New Jersey has applied for final authorization of certain revisions to its hazardous waste program under the Solid Waste Disposal Act, as amended, (the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has reviewed New Jersey's application and has made a decision, subject to public review and comment, that New Jersey's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New Jersey's hazardous waste program revisions. New Jersey's application for program revision is available for public review and comment.

**DATES:** Final authorization for New Jersey is effective January 10, 1994, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on New Jersey's program revision application must be received by the close of business December 9, 1993.

**ADDRESSES:** Copies of New Jersey's program revision application are available during the business hours of 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Ms. Norine Binder, Chief, Bureau of Advisement and Manifest, New Jersey Department of Environmental Protection and Energy, 401 East State Street, Trenton, New Jersey 08625, (609) 292-8341; U.S. EPA Region II Field Office Library, 2890 Woodbridge Avenue, Building 209, Edison, New Jersey 08837, (908) 321-6762. Written comments should be sent to Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 26

Federal Plaza, New York, New York 10278, (212) 264-2301.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Craig, Environmental Scientist, Hazardous and Solid Waste Programs Branch, Air and Waste Management Division, U.S. EPA, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-6458.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become equivalent to requirements promulgated under HSWA authority. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

##### B. New Jersey

New Jersey initially received final authorization for its base RCRA program on February 21, 1985. New Jersey received authorization for revisions to its program on October 9, 1988. On September 28, 1993, New Jersey submitted a program revision application for additional program approvals. Today New Jersey is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed New Jersey's application, and has made an immediate final decision that New Jersey's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program revisions submitted by New Jersey. The public may submit written comments on EPA's immediate final decision up until December 9, 1993. Copies of New Jersey's application for program revisions are available for inspection and copying at the locations indicated in the ADDRESSES section of this document.

Approval of New Jersey's program revisions shall become effective in 60 days unless an adverse comment

pertaining to the State's revision application discussed in this document is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A

withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final

decision takes effect or reverses the decision.

New Jersey's program revision application covers provisions which are analogous to the following Federal program provisions:

Federal requirement	Analogous state authority
Listing of spent solvents, 50 FR 53315, December 31, 1985, as amended on January 21, 1986 at 51 FR 2702 <sup>1</sup>	NJAC 7:26-8.13.
Listing of EDB wastes, 51 FR 5327, February 13, 1986 <sup>1</sup>	NJAC 7:26-8.14, 8.19.
Listing of four spent solvents, 51 FR 6537, February 25, 1986 <sup>1</sup>	NJAC 7:26-8.13, 8.15, 8.16, 8.19.
Paint filter test, 50 FR 18370, April 30, 1985 <sup>1</sup>	NJAC 7:26-9.4, 10.8, 11.4.
Exception reporting for small quantity generators of hazardous waste, 52 FR 35894, September 23, 1987. <sup>1</sup>	NJAC 7:26-7.4, 8.3.
Corrections to test methods manual, 49 FR 47390, December 4, 1984	NJAC 7:26-8.19.
Definition of solid waste, 50 FR 614, January 4, 1985, as amended on April 11, 1985 at 50 FR 14216 and August 20, 1985, at 50 FR 33541.	NJAC 7:26-1.4, 1.6, 7.5, 8.1, 8.2, 8.3, 8.13, 8.15, 9.1, 10.7, 11.1, 11.5, 11.6, 12.1.
Satellite accumulation, 49 FR 49568, December 20, 1984	NJAC 7:26-9.3.
Interim status standards for treatment, storage, and disposal facilities, 50 FR 16044, April 23, 1985	NJAC 7:26-10.6, 11.4, 7:14A-4.7.

<sup>1</sup> Indicates HSWA provisions.

New Jersey's hazardous waste program is broader in scope than the Federal program in that the State regulates a larger universe of solid and hazardous wastes. For example, the State refers in NJAC 7:26-8.1 to the following State provisions which are considered broader in scope: (1) NJAC 7:26-8.20 which lists waste oils and Polychlorinated Biphenyls ("PCBs") as hazardous wastes from non-specific sources, and (2) NJAC 7:26-8.6 which provides for the classification of waste streams as hazardous waste, on a case-by-case basis, by the State. State-imposed requirements which are beyond the scope of coverage of the Federal program are not part of the federally approved program. New Jersey is not seeking or receiving authorization for regulations that are broader in scope than the Federal regulations. State regulations which do not correspond to the Federal regulations for which New Jersey is seeking authorization, but which are included in the State's September 28, 1993 program revision application, are present solely for informational purposes. Anyone concerned about determining with specificity which State provisions are broader in scope than the Federal regulations should refer to the program revision application.

Although EPA suspended its issuance of RCRA permits upon the effective date of final authorization of New Jersey's base program, EPA has continued to administer RCRA hazardous waste permits which were issued by EPA prior to EPA's final authorization of New Jersey's base program. EPA, upon the effective date of this authorization will no longer include in future HSWA permits, to be issued by EPA, those

HSWA provisions covered by these program revisions. EPA will, however, continue to administer any HSWA permit with these newly authorized provisions where the permits were issued prior to EPA's authorization of these program revisions. EPA's administration of these permits will be in accordance with 40 CFR part 124 and will continue until such time as New Jersey issues its own State permits for these provisions and EPA terminates the federally issued permits.

New Jersey is not authorized nor seeking to be authorized to operate the Federal program on Indian lands. This authority shall remain with EPA.

**C. Decision**

I conclude that New Jersey's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Jersey is granted final authorization to operate its hazardous waste program as revised. New Jersey now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its revised program application, previously approved authorities and HSWA. New Jersey also has primary enforcement responsibilities, although EPA retains the right to conduct inspections and other information under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

**Compliance With Executive Order 12866**

The Office of Management and Budget has exempted this rule from the

requirements of section 6 of Executive Order 12866.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Jersey's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 30, 1993.

**William J. Muszynski,**

*Acting Regional Administrator.*

[FR Doc. 93-27600 Filed 11-8-93; 8:45 am]

**BILLING CODE 6560-50-P**

**40 CFR Part 761**

[OPPTS-62122A; FRL 4648-2]

RIN 2070-AC01

**Criteria for Granting Approval for Commercial Storage of Polychlorinated Biphenyls (PCBs) for Disposal**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This final rule amends the PCB regulations to finalize an amendment to the criteria EPA uses as a basis for granting written, final approval to engage in the commercial storage of PCB waste. Specifically, the amendment clarifies that the existence of two or more related civil violations or a single environmental criminal conviction in an applicant's environmental compliance history will not automatically lead to denial of an application for a PCB commercial storage approval. This document reflects changes made in response to comments on the proposed rule.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Time on November 23, 1993. These amendments shall be effective on December 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551, FAX: (202) 554-5603 (document requests only).

**SUPPLEMENTARY INFORMATION:** This final rule is issued pursuant to section 6(e)(1)(A) of the Toxic Substances Control Act (TSCA), which authorizes the Environmental Protection Agency to promulgate rules to prescribe methods for the disposal of PCBs.

**I. Background**

On December 21, 1989, EPA published in the *Federal Register* a final rule amending its regulations for the disposal and storage of PCBs (Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities (54 FR 52716)). Among other things, the rule required commercial storers of PCB waste to obtain approval from EPA to operate a commercial storage facility. On March 5, 1990, the National Solid Wastes Management Association and Chemical Waste Management, Inc. (petitioners) filed a

joint petition for review of the PCB Notification and Manifesting Rule in the United States Court of Appeals for the District of Columbia Circuit (Docket No. 90-1127). On November 20, 1992, EPA and the petitioners filed a Settlement Agreement with the court whereby petitioners agreed to dismiss with prejudice their petition if EPA amended the criteria for the approval of commercial storers at 40 CFR 761.65(d)(2)(vii) in substantial conformity with the following language:

The environmental compliance history of the applicant, its principals, and its key employees shall be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, EED) that history evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain its operations in a compliance status.

On January 26, 1993, EPA published a proposal in the *Federal Register* (58 FR 6184) to amend § 761.65(d)(2)(vii) to read as follows:

The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, CMD) that history evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations.

The comment period for the proposed rule ended on March 12, 1993.

Section 761.65(d)(2) establishes seven criteria which an applicant must meet before EPA grants it a commercial storage approval for PCB waste. As promulgated in 1989, § 761.65(d)(2)(vii) (environmental compliance history criteria) provided that there was sufficient basis to deny an application:

...whenever in the judgment of the Regional Administrator (or Director, EED) two or more related civil violations or a single environmental criminal conviction evidence a pattern or practice of noncompliance that demonstrate the applicant's unwillingness or inability to achieve and maintain its operations in a compliance status.

In the context of their joint petition for review of the PCB Notification and Manifesting Rule, petitioners raised the concern that § 761.65(d)(2)(vii) might be interpreted to mean that a compliance history containing two civil violations or one criminal conviction would automatically result in a determination

that an applicant for a commercial storage approval was unwilling or unable to maintain its operations in a compliance status. The petitioners believed that the language in the regulation regarding specific numbers of past civil (two) and criminal (one) violations might be understood by EPA, citizens' groups or reviewing courts as establishing absolute, numerical approval criteria applicable to any commercial storage applicant, regardless of the nature of the violations, the size of its business or the length of time it has been engaged in waste handling activities.

Having considered the matter further and in response to comments, EPA has decided that inclusion in § 761.65(d)(2)(vii) of references to specific numbers of past violations is not necessary to achieve its goal of ensuring that PCB storage approval applications not be granted when an applicant's history of environmental civil violations or criminal convictions evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations. To broaden its discretion in this area, EPA has also decided to change the phrase "shall be deemed to constitute" to "may be deemed to constitute."

Each commercial storage approval decision will entail a case-by-case evaluation of all the circumstances of an applicant's environmental compliance history. In addition to the number of violations, EPA will consider a variety of factors in determining whether the existence of prior violations evidences a pattern or practice of noncompliance sufficient to warrant denial of a commercial storage approval application. Those factors will include, but are not necessarily limited to: the size of the applicant's business; the extent of the applicant's services; the length of time the applicant has been in business; the nature and details of the acts attributed to the applicant; the degree of culpability of the applicant; the applicant's cooperation with State or Federal agencies involved in an investigation of the underlying incidents; and self-policing or internal education programs established by the applicant to prevent such incidents.

**II. Response to Comments on the Proposed Rule**

The comment period for the proposed rule ended on March 12, 1993, and EPA received four comments on the proposal. Comments were received from a private citizen, the Hazardous Waste Treatment Council (HWTC), the

Chemical Manufacturers Association (CMA), and General Electric (GE). All comments were considered, and EPA's responses are given below.

A private citizen thought it inappropriate for EPA to amend the PCB regulations if the primary impetus is to comply with a settlement agreement entered into with members of the regulated community. The commenter said it gave the appearance that the EPA was merely going through the motions required by the Administrative Procedure Act and not really interested in comments from other segments of the public. EPA disagrees. In the November 20, 1992 Settlement Agreement between EPA and the National Solid Wastes Management Association and Chemical Waste Management, Inc., EPA did not commit itself to adopting specific language as a final regulation. Instead, EPA agreed to publish the proposed regulation in the *Federal Register* for comment. While EPA agreed to make its best efforts to conclude the rulemaking proceeding within 9 months of the issuance of the proposed rulemaking, EPA did not promise that the final rule would be identical to the proposal. Indeed, it is not. The parties to the Settlement Agreement understood that EPA could not promise specific final regulatory language and provided a mechanism for reactivating the lawsuit in the event EPA did not adopt a final regulation "in substantial conformity with the proposal."

CMA supported the proposed changes to the criteria for EPA granting approval to commercial storers of PCB waste. It believed that evaluation of each applicant on a case-by-case basis would provide adequate protection for the environment as well as afford EPA the flexibility to preserve disposal resources necessary for removing PCBs from the environment.

GE supported the Agency's efforts to clarify this section of the regulation but believed that there is a sense in which the proposed amendment was not as clear as the original section. GE noted that the proposed amendment uses the less specific term "environmental compliance history" as a substitute for the more specific term "two or more related civil violations or a single environmental criminal conviction." In a given case, said GE, this lack of specificity could work injustice. To illustrate, GE presents a situation where EPA or a state agency might allege violations in an informal way which for one reason or another do not rise to the level of enforcement actions. Even though the regulated entity might wish to deny and contest such allegations, there may be no way to do so on the

record. GE believes that if such informal allegations became part of the applicant's "environmental compliance history" the denial of a permit would suffer from lack of due process of law.

GE recommended that the amendment pick up the specificity of the original language in defining the kind of compliance history that would be taken into account during EPA's review of the application, but do so without indicating a specific number of violations that could be used as a benchmark for the denial of an application. GE's recommendation was to delete the term "environmental compliance history" from § 761.65(d)(2)(vii) and in its place insert the phrase "the history of environmental civil violations or criminal convictions." EPA agrees with GE's comment regarding the need for more specificity with respect to the term "environmental compliance history." However, rather than adopting GE's suggested language for this final rule, EPA is amending the language proposed at § 761.65(d)(2)(vii) to read as follows:

The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, CMD) that history of environmental civil violations or criminal convictions evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations.

The HWTC fully supported the proposed changes but at the same time believed that further clarification was needed to ensure the objective review of a commercial storage application. They suggested that EPA establish clear guidance for evaluating and rating the environmental compliance history of an applicant seeking approval as a commercial storer of PCB waste and that this guidance be binding on all EPA officials and made available to the public and the regulated community.

EPA does not agree that additional guidance is necessary to ensure the objective review of commercial storage applications. Publishing a rating system to control each review, as HWTC recommends, is not reasonable given that each review case is different. The seven factors for evaluating an applicant's compliance history mentioned in Unit I of this preamble, as well as the changes made in response to the comment submitted by GE, help to ensure that each review of an applicant's compliance history is a fair and objective assessment of an

applicant's environmental compliance history in light of the totality of the circumstances. While EPA understands HWTC's desire for predictability in the application review process, we believe that construction of a decision matrix approximating that used for calculating TSCA penalties would inject an element of complexity and rigidity into the approval process distinctly at odds with the spirit of today's amendment.

### III. Regulatory Assessment Requirements

#### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether or not the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e. Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (aka "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and therefore not subject to OMB review.

#### B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (15 U.S.C. 8091 et seq., Pub. L. 96-534, September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the final rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required. This final rule is clarifying in nature, i.e., it neither imposes nor removes a burden on small business. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C., the Assistant Administrator, who has been delegated the authority by the Administrator, certifies that this rule

will not have a significant impact on a substantial number of small entities.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. EPA has determined that nothing in this rule constitutes a "collection of information" as defined at 44 U.S.C. 3502(4).

#### IV. Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this final rulemaking. This record includes basic information considered by the Agency in developing this proposal. The official records of previous PCB rulemakings are incorporated by reference as they exist in the TSCA Nonconfidential Information Center (NCIC). A full list of these materials is available for inspection and copying in the NCIC. However, any Confidential Business Information (CBI) is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection.

##### A. Previous Rulemaking Records

1. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Rule," Docket No. OPTS68005, 43 FR 7150, February 17, 1978.
2. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.
3. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Process, Distribution in Commerce, and Use Prohibitions: Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.
4. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Exclusions, Exemptions and Use Authorizations," Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.
5. Official Rulemaking Record from "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities," Docket No. OPTS-62059B, 54 FR 52176, December 21, 1989.

##### B. Reference Documents

1. In the United States Court of Appeals for the District of Columbia Circuit. National Solid Wastes Management Association and

Chemical Waste Management, Inc., Petitioners, v. United States Environmental Protection Agency, Respondent: Joint Petition for Review — Case No. 90-1127, (March 5, 1990):3pp. Submitted by J.B. Molloy, et al. of Piper Marbury, counsel.

2. In the United States Court of Appeals for the District of Columbia Circuit. National Solid Wastes Management Association and Chemical Waste Management, Inc., Petitioners, v. U. S. Environmental Protection Agency, Respondent. Settlement Agreement — Case No. 90-1127, (November 20, 1992):4pp.

3. Chemical Waste Management, Inc. Letter from G.R. Siedor to C. Elkins, USEPA. Subject: New PCB Rules Promulgated in 54 FR 52716, (Feb. 23, 1990):4pp.

4. USEPA, OTS. Letter from J.J. Merenda to G.R. Siedor of Chemical Waste Management, Inc. Subject: Response to Feb. 23, 1990 Letter, (June 8, 1990):3pp.

#### Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 1, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 761 is amended as follows:

#### PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. In § 761.65, by revising paragraph (d)(2)(vii) to read as follows:

##### § 761.65 Storage for Disposal

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(vii) The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, CMD) that history of environmental civil violations or criminal convictions evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations.

\* \* \* \* \*

[FR Doc. 93-27608 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-50-F

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 93-147]

#### Radio Broadcasting Services; Volcano, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document substitutes Channel 299C1 for Channel 299A at Volcano, Hawaii, and modifies the construction permit for Station KKO(A)(FM) to specify operation on Channel 299C1, at the request of Li Hing Mui, Inc. See 58 FR 32503, June 10, 1993. Channel 299C1 can be allotted to Volcano in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) west. The coordinates for Channel 299C1 at Volcano are North Latitude 19-26-00 and West Longitude 155-15-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-147, adopted October 19, 1993, and released November 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

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

Radio broadcasting.

#### PART 73—[AMENDED]

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

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

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 299A and adding Channel 299C1 at Volcano.



Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-27448 Filed 11-8-93; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 93-210; RM-8283]

**Radio Broadcasting Services; Webster Springs, West Virginia**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, at the request of Cat Radio, Inc., substitutes Channel 262B for Channel 262A at Webster Springs, and modifies its construction permit accordingly. See 58 FR 40398, July 28, 1993. Channel 262B can be allotted to Webster Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction petitioner's requested site. The coordinates for Channel 262B at Webster Springs are North Latitude 38-28-42 and West Longitude 80-34-54. Since Webster Springs is located within the protected areas of the National Radio Astronomy Observatory "Quite Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirements of § 73.1030(a) of the Commission's Rules. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-210, adopted October 10, 1993, and released November 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 262A and adding Channel 262B at Webster Springs.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-27449 Filed 11-8-93; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 93-219; RM-8290]

**Radio Broadcasting Services; Staples, Minnesota**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document substitutes Channel 234C3 for Channel 234A at Staples, Minnesota, and modifies the construction permit for Station KSKK to specify operation on Channel 234C3 in response to a petition filed by Normin Broadcasting Company. Canadian concurrence has been received for the allotment of Channel 234C3 at Staples at coordinates 46-23-29 and 94-57-21. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 93-219, adopted October 19, 1993, and released November 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 234A and adding Channel 234C3 at Staples.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-27450 Filed 11-8-93; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 204, 672, 675, and 676**

[Docket No. 921114-3183; I.D. 102892B]

RIN 0648-AD19

**Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; Limited Access Management of Fisheries off Alaska**

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

ACTION: Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (BSAI), Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the fishery for Pacific halibut in and off the State of Alaska (Alaska or State). These regulations establish an individual fishing quota (IFQ) limited access system in fixed gear fisheries for Pacific halibut and sablefish in and off Alaska. In addition, this action implements a Western Alaska Community Development Quota (CDQ) program for halibut and sablefish fixed gear fisheries.

These actions are intended by the North Pacific Fishery Management Council (Council) to promote the conservation and management of halibut and sablefish resources, and to further the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act)

that provide authority for regulating these fisheries. The IFQ program is intended to resolve various conservation and management problems that stem from the current "open access" regulatory regime. The CDQ program is intended to help develop commercial fisheries in communities on the Bering Sea coast by allowing them exclusive access to specified amounts of halibut and sablefish in the BSAI.

**EFFECTIVE DATE:** December 9, 1993, except §§ 676.20(a) through (e) and (g) and 676.21, which will become effective on January 1, 1994, and §§ 675.20(a)(3) introductory text, 676.13(a) and (b), 676.14, 676.16, 676.17, 676.20 introductory text and paragraph (f), 676.22, 676.23, and 676.24, which will become effective on January 1, 1995.

**ADDRESSES:** Copies of Amendments 15 and 20, and the final supplemental environmental impact statement/environmental impact statement (FEIS) for the IFQ program may be obtained from the Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

**FOR FURTHER INFORMATION CONTACT:** Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Alaskan fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) and the affected human environment are described in the FEIS and in the FMPs. The FEIS incorporates a supplemental EIS (SEIS) with respect to sablefish, regulatory impact reviews (RIRs), initial regulatory flexibility analyses (IRFAs), and fishery impact statements that assess the potential economic and social effects of this action. Specifically, the FEIS is comprised of the: (1) Draft SEIS/RIR/IRFA regarding sablefish dated November 16, 1989; (2) revised supplement to the Draft SEIS/RIR/IRFA dated May 13, 1991; (3) Draft EIS/RIR/IRFA regarding halibut dated July 19, 1991; (4) Draft SEIS/EIS/RIR/IRFA regarding sablefish and halibut dated March 27, 1992; and (5) Final SEIS/EIS/IRFA dated September 15, 1992, which includes responses to comments received on the March 27, 1992, draft. This entire suite of analyses is referred to hereafter as the FEIS. Unless otherwise noted, however, page or section references to the FEIS refer to the September 15, 1992, document.

The halibut regulatory amendment and Amendments 15 and 20 to the respective FMPs implemented by this action were prepared by the Council and submitted to the Secretary of Commerce (Secretary) for review under

provisions of the Halibut Act and the Magnuson Act. The Under Secretary approved the regulatory amendment and Amendments 15 and 20 on January 29, 1993.

The Council does not have an FMP for halibut. The domestic fishery for halibut in and off Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary, limited access policies for the Pacific halibut fishery in Convention waters in and off Alaska (see discussion in "Consistency" section below). "Convention waters" means the maritime areas off the west coast of the United States and Canada as described in Article I of the Convention (see 16 U.S.C. § 773(d)). The Council acted under this authority in recommending its IFQ program for the halibut fishery. The Under Secretary approved this recommendation on January 29, 1993.

Sablefish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA groundfish FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to the U.S. groundfish fisheries appear at 50 CFR part 620.

#### Background

The problems and issues that the halibut regulatory amendment and Amendments 15 and 20 are intended to resolve are discussed in the FEIS and in the proposed rule (57 FR 57130, December 3, 1992, corrected at 57 FR 61870, December 29, 1992). These include allocation conflicts, gear conflict, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and fishing

communities, and rural coastal community development of a small boat fleet.

Implementation of the IFQ program for halibut and sablefish fixed gear fisheries culminates more than 5 years of discussion, debate, and analysis by the Council and NMFS. Beginning in 1987, the Council solicited the views of the fishing industry and general public on current problems in managing the sablefish fishery including limited access alternatives. In December 1988, the Council decided that the open access status quo was unacceptable for the fixed gear sablefish fishery and expressed a desire to explore the limited access options of license limitation and IFQs. During 1989, the Council identified the 10 conservation and management problems listed above and developed a draft supplemental EIS that analyzed four alternative management regimes, including continued open access (status quo), license limitation, IFQs, and annual fishing allotments. At its meeting in January 1990, the Council decided to focus on IFQ options as an alternative to the status quo. The Council considered a series of analyses of IFQ options throughout 1990 and early 1991. In addition, in early 1991, the Council found that management problems in the fixed gear sablefish fishery also afflicted the halibut fishery. Therefore, the Council decided to consider similar alternative IFQ systems for the halibut fishery with the intent that a single IFQ program would be applied to both fisheries. A draft EIS assessing the potential effects of alternative halibut IFQ programs was prepared and made available for public comment on August 2, 1991 (56 FR 37094).

At its meeting in September 1991, the Council tentatively selected a preferred IFQ alternative for both fisheries and announced its intention to make a final decision on the preferred alternative at its meeting in December 1991. Meanwhile, an agency/industry IFQ implementation team, established by the Council, reviewed the Council's tentative recommendation for practical difficulties. After receiving additional public comment and recommendations of the implementation team, the Council, on December 8, 1991, approved the halibut and sablefish fixed gear fishery IFQ program for Secretarial review.

Council staff prepared a supplement to the draft EIS after the Council, at its meeting in January 1992, requested additional analysis of the potential effects of the preferred IFQ alternative. This additional supplemental analysis was made available to the public on

March 27, 1992. At its meeting in April 1992, the Council received additional public comment on the proposed IFQ program and the March 27, 1992, analysis, and reconfirmed its original decision to recommend the halibut and sablefish IFQ program to the Secretary. A 45-day public comment period on the draft EIS was announced on May 15, 1992 (57 FR 20826).

The Director, Alaska Region, NMFS (Regional Director), made a preliminary evaluation of all documents relevant to the Council's IFQ recommendation and determined that they were sufficient in scope and substance to warrant public and Secretarial review. The official "receipt date" of the Council's IFQ program recommendation is October 26, 1992. A notice of availability of the FMP amendment was published on November 3, 1992 (57 FR 49676), and the proposed rule was published on December 3, 1992. A notice of availability of the FEIS was published on December 11, 1992 (57 FR 58805). Ninety-two letters of comment were received on the proposed rule. After careful consideration of the comments, key issues raised during Council development of the IFQ program, the FEIS, and the public record, the Secretary, on January 29, 1993, approved the recommended IFQ program in its entirety.

#### **Consistency With Magnuson Act and Halibut Act Provisions To Establish Limited Access Management Regimes**

The Secretary is authorized by sections 304 and 305 of the Magnuson Act to approve and implement a FMP or FMP amendment recommended by the Council if the FMP or amendment is consistent with the national standards at section 301, other provisions of the Magnuson Act, and other applicable laws. One key provision of the Magnuson Act is section 303(b)(6), which specifies factors that the Council and the Secretary must consider in developing a limited access system. With respect to halibut, section 5(c) of the Halibut Act authorizes the Secretary to implement limited access regulations for the U.S. halibut fishery. Such regulations must be consistent with the Halibut Act and section 303(b)(6) of the Magnuson Act, and must not be in conflict with IPHC regulations. The following discussion reviews the Secretary's findings of consistency with these key statutory requirements.

#### **National Standard 1**

This national standard requires conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum

yield (OY) from the fishery. Although separate issues, the prevention of overfishing and the achievement of OY are related. In effect, the most important limitation on the specification of OY is that management measures designed to achieve it must also prevent overfishing. "Overfishing" is defined in the NOAA Guidelines for Fishery Management Plans (Guidelines), 50 CFR part 602, as a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce maximum sustainable yield on a continuing basis (§ 602.11(c)).

The Council has developed an objective and measurable definition of overfishing groundfish as required by the Guidelines. The Council annually specifies the total allowable catch (TAC) of sablefish to assure that harvesting up to its TAC does not cause overfishing of the sablefish stock. The IPHC follows a similar process in establishing the annual catch limits for halibut.

The IFQ program will not change the process by which the Council and the IPHC respectively establish the sablefish TACs and halibut catch limits, but rather will modify the distribution of harvesting allocations among fishermen. Therefore, the IFQ program sustains existing management measures that prevent overfishing. Further, the IFQ program will improve the prevention of overfishing by providing for reductions in bycatch and deadloss that normally increase with increased fishing effort in open access fisheries. The slower paced fishery that is anticipated under the IFQ program will reduce fishing mortality caused by lost fishing gear and bycatch because gear conflicts will be reduced with fewer fishermen operating over a longer season, and because fishermen will more carefully set and retrieve their gear to minimize their operating costs. The bycatch of halibut or sablefish in fixed gear fisheries for other species is reduced when fishermen who hold halibut or sablefish IFQ can land those species that would otherwise be discarded. The slower paced fishery also will enhance the ability of NMFS to prevent exceeding the overall TAC or catch limit because the individual landings of fish will be more closely monitored.

The achievement of OY is enhanced as a result of improvements in the prevention of overfishing. Reductions in wastage of fish from bycatch and deadloss are likely to produce increases in future yields. Fishing mortality of young, undersized fish results in a loss of the growth of those fish. This lost growth represents foregone future biomass and potential harvest. The reduction of such loss will increase the

benefits to the Nation in terms of potential food production, recreational opportunities, economic, social, and ecological factors. The IFQ program further optimizes the yield from these fisheries by addressing problems associated with allocation conflicts, gear conflicts, deadloss, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability, and rural coastal development of a small-boat fleet.

#### **National Standard 2**

National standard 2 requires conservation and management measures to be based on the best scientific information available. The analytical work and data sources queried in developing the IFQ program were extensive. As explained in the preamble to the proposed rule, a series of four separate analyses comprise the FEIS and were made available for public review over a period of two and a half years. This analytical work relied on the most current landings data, economic, social, and biological information available at the time of the analysis. Data sources are given in reference chapters of the FEIS and its component parts. In addition to the FEIS and the Council's record of debate and public comment, the Secretary considered information presented in comments on the FMP amendments and proposed rule. The Secretary is satisfied that a reasonably comprehensive record of data collection and analysis has been assembled and finds that the IFQ program is consistent with national standard 2.

#### **National Standard 3**

This standard requires an individual stock of fish to be managed, to the extent practicable, as a single unit throughout its range, and interrelated stocks of fish to be managed as a unit or in close coordination. The range of halibut and sablefish stocks extends from the northern limits of the BSAI, north and south of the Aleutian peninsula and islands, and throughout the GOA to the U.S.-Canada boundary at Dixon Entrance. These species are found also inside State (territorial sea and internal) waters and in the EEZ. They are found also in Canadian waters and in and off of the States of Washington and Oregon, which are outside the jurisdiction of the Council.

Although national standard 3 does not apply to the halibut IFQ program developed under the Halibut Act, this IFQ program will govern all commercial halibut fishing throughout the range of Pacific halibut in and off Alaska. This fishery accounts for 79.6 percent of the total commercial halibut fishery, based

on 1993 catch limits. With respect to sablefish, the IFQ program will apply to all fishing with fixed gear in the EEZ and, with limited exception, to fishing with fixed gear in State waters by fishermen with IFQ permits. The sablefish fishery occurs predominately in the EEZ. Several relatively small and distinct sablefish fisheries (i.e., Prince William Sound, Chatham Strait, and Clarence Strait) within State waters are managed by the State. The IFQ program will not apply to these fisheries. The IFQ program also will not apply to other sablefish fishing with fixed gear that is entirely within State waters by persons fishing without IFQ permits. Such fishing is expected to produce insignificant harvests of sablefish.

The Council included halibut and sablefish in the same IFQ program because these species are interrelated. The IFQ program also requires other species (i.e., Pacific cod and rockfish) to be retained, if caught in association with the IFQ species, to the extent such retention does not violate other State or Federal catch limitations. This management measure purposely recognizes the interrelated nature of the IFQ species with other stocks of fish. Therefore, the Secretary finds the IFQ program consistent with national standard 3.

#### National Standard 4

Under national standard 4, conservation and management measures shall not discriminate between residents of different states. Further, if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The Halibut Act also requires any allocations or assignment of halibut fishing privileges among U.S. fishermen to be consistent with the same standards. This national standard raises two issues, discrimination and allocation.

**Discrimination.** An FMP must not differentiate among people or corporations based on their state of residency and must not rely on or incorporate a discriminatory state statute (§ 602.14(b)). All fishermen are accorded the same treatment under the IFQ program, regardless of their state of residence, and there is no evidence of discriminatory state statutes in the IFQ implementing rules. The CDQ part of the IFQ program provides special benefits to residents of certain communities on the Bering Sea coast.

However, management measures that have different effects on persons in various geographic locations are permissible.

**Allocation.** An "allocation" or "assignment" of fishing privileges is defined in the Guidelines as direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals (§ 602.14(c)(1)).

To be consistent with the "fairness and equity" criterion, an allocation should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Otherwise, the inherent advantaging of one group to the detriment of another would be without cause. In addition, an allocation of fishing privileges may impose hardships on one group if they are outweighed by the total benefits received by another group (§ 602.14(c)(3)(i)).

The contribution of the IFQ program to the achievement of the BSAI and GOA groundfish OYs is discussed under national standard 1, above, and under the section 303(b)(6) factors below. In addition, the IFQ program will contribute to the achievement of OY by reducing the likelihood of localized and pulse overfishing by spreading fishing effort over more time. Total fishing mortality also should be reduced by providing fishermen with incentive to more carefully deploy and retrieve their gear. This should reduce ghost fishing by lost gear and reduce discard mortality rates of juvenile undersized fish.

The primary management objectives of the FMP for BSAI groundfish are essentially the same as national standards 1, 2, 4, and 5. The furtherance of these objectives are discussed under these respective standards. The primary management goal of the FMP for GOA groundfish is to maximize positive economic benefits to the United States consistent with resource stewardship for the continuing welfare of GOA living marine resources. Specific objectives to accomplish this goal that are relevant to the IFQ program include minimizing waste and developing fishing effort controls when requested by the industry. As indicated in the FEIS (sec. 6.1), economic benefits to the United States are expected from the IFQ program, although they are not maximized in deference to social concerns. Fishing mortality attributable to deadloss and bycatch discards are reduced as explained above. The IFQ program, which will control fishing effort by controlling access to the resource, was developed at the request

of a large part of the fixed gear fishing industry.

There is no question that the IFQ program will restructure the current fixed gear fishery for halibut and sablefish. Some fishermen will be better off and some will be worse off under the IFQ program. Although the program will not prevent most persons from entering these fisheries, those persons who receive an initial allocation of harvesting privileges will have a competitive advantage over subsequent participants by not having to pay for those privileges. In brief, those persons benefited by receiving an initial allocation are vessel owners or lease holders who owned or leased a vessel that made fixed gear landings of halibut and sablefish at any time during 1988, 1989, or 1990. The Council's rationale for this particular allocation is that vessel owners and lease holders are the participants who supply the means to harvest fish, suffer the financial and liability risks to do so, and direct the fishing operations. Processors typically are not directly involved in harvesting fish, and crew members are rewarded for their labor and risks through a profit sharing system. The FEIS indicates that the Council made a reasonable effort to estimate the benefits and costs imposed by this allocation as compared with alternative allocation schemes, including the status quo.

An allocation of fishing privileges may be considered consistent with the conservation criterion if it encourages a rational, more easily managed use of the resource, or if it optimized the yield in terms of size, value, market mix, price, or economic or social benefit of the product (§ 602.14(c)(3)(ii)). The IFQ program satisfies this criterion because it allows fishermen to adjust their fishing operations according to weather conditions, market prices, and other factors that currently are discounted in a race for fish during relatively short fishing seasons. This IFQ system will decrease fishing mortality due to discards and bycatch because fishermen will have an incentive to minimize their costs. Fishermen will have an opportunity to land halibut and sablefish that they caught in other fixed gear fisheries that would be otherwise discarded. In addition, the IFQ program will provide an incentive for fishermen to land a premium product that will maximize market value. This will occur as a result of a greater ability for fishermen to coordinate their landings with market variables, and more time while fishing to clean and properly preserve their catch. Hence, the overall yield, in terms of volume and value, from the halibut and sablefish resources

will be optimized. However, enforcement of IFQ rules is critical to limit the extent to which highgrading and underreporting of harvests subtract from gains in yield.

Finally, consistency with national standard 4 requires avoidance of excessive shares. An allocation must be designed to avoid creating conditions that foster any person or other entity from acquiring an inordinate share of fishing privileges or control by buyers and sellers that would not otherwise exist (§ 602.14(c)(3)(iii)). Although the national standard guidelines do not specifically define an "excessive share," they imply conditions of monopoly or oligopoly. The Council was especially concerned with the effects of consolidation under the IFQ program on current participants and coastal communities. Therefore, the Council recommended a limit on ownership of 1 percent of the total quota share (QS) of sablefish for the BSAI and GOA. These limitations are area-specific for sablefish east of 140° W. longitude, and similar limits for halibut are area-specific. These limits are adopted by the Secretary and appear at § 676.22 (e) and (f) of the final rule. For reasons explained in the preamble to the proposed rule, these limits are imposed on the use of QS rather than its ownership. It is possible that these limits could be concentrated in a single area which could result in localized oligopsony for harvesting or processing. This would not, however, lead to overall market control of the fishery. In addition, a limit is imposed on the amount of QS that can be used on any single vessel (§ 676.22(h)). Finally, NOAA notes that the allocation scheme can be changed by the Council and the Secretary without permission of the QS or IFQ holders. Such a change may occur if the Council determines that the IFQ program in operation allows for too much or too little consolidation. Therefore, the IFQ program is consistent with national standard 4 with regard to excessive share.

#### National Standard 5

This standard requires conservation and management measures to promote efficiency in the use of fishery resources, where practicable, except that no such measure will have economic allocation as its sole purpose. The Guidelines recognize that, theoretically, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel (§ 602.15(b)(2)). Hence, an efficient management regime conserves all resources, not just fish stocks. Implementing more efficient

management will change the distribution of benefits and burdens in a fishery if it involves the allocation of harvesting privileges. This standard mandates that any such redistribution should not occur without an increase in efficiency unless less efficient measures contribute to other social and biological objectives.

Although the requirements of national standard 5 do not apply to the halibut IFQ system developed pursuant to the Halibut Act, the Secretary finds that the entire IFQ program, including those measures developed for halibut, is consistent with this standard. This IFQ program provides fishermen an opportunity to reduce economic waste associated with overcapitalization, congested fishing grounds, and fishing mortality due to bycatch discard. Harvesting costs will be lowered because of reduced need for fishermen to carry redundant gear and reduced vessel operating costs (FEIS p. 2-6). The quality and value of fishery products will be increased (FEIS p. 2-4), and there will be increased permanent employment opportunities for crew members and processor workers in coastal communities (FEIS p. 2-12). Processing and marketing costs should decrease as the need to hold large amounts of processed fish in storage until sold is diminished (FEIS p. 2-6). Moreover, the replacement of short intensive fishing seasons with longer, predictable seasons will increase safety at sea and reduce the cost of human capital and equipment invested in the production of halibut and sablefish products. Greater efficiency may have been achieved; however, the Council minimized disruption to the current social fabric through various restrictions on the use and transfer of QS. The IFQ program also will provide biological benefits in terms of reduced discard and deadloss waste, and enhanced prevention of overfishing. These social and biological considerations indicate that economic allocation is not the sole purpose of the IFQ program.

#### National Standard 6

National standard 6 requires that management measures allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Variations, uncertainties, and unforeseen circumstances can be experienced in the form of biological or environmental changes, or social, technological, and economic changes. Flexibility of a management regime is necessary to respond to such contingencies (§ 602.16 (b) and (c)).

Again, although the requirements of national standard 6 do not apply to the

halibut IFQ system developed pursuant to the Halibut Act, the Secretary finds the entire IFQ system, including measures developed under the Magnuson Act and the Halibut Act, is consistent with national standard 6. The IFQ program will not change the way in which the overall halibut and sablefish catch limits are determined. These catch limits respond to changes in stock conditions to the extent that they are based on annual biological estimates. However, the IFQ program provides for increased flexibility for fishermen to adjust their fishing effort to changes in biological or economic conditions. The IFQ program allows fishermen to fish when conditions are most favorable (to the fishermen) and to reduce fishing effort on halibut and sablefish when conditions are less favorable. Under current open access management, a fisherman who wants to participate in these fisheries to any extent is forced to participate during the relatively short fishing seasons, regardless of prevailing economic conditions. The IFQ program will enhance the ability of the fishery to respond to variations and contingencies

#### National Standard 7

This national standard requires management measures to minimize costs and avoid unnecessary duplication. Management measures should not impose unnecessary burdens on the economy, individuals, organizations, or governments (§ 602.17(c)).

The requirements of national standard 7 do not apply to halibut regulations developed pursuant to the Halibut Act. Nevertheless, the Secretary finds that this IFQ system, including those regulations developed under the Halibut Act, is consistent with national standard 7. The FEIS (p. 6-2) indicates that the IFQ program will increase administration and enforcement costs by about \$2.7 million per year, but that annual benefits will be at least \$30.1 million. In addition, a fisherman is afforded greater flexibility under the IFQ program by adjusting his QS holdings and determining when he will conduct fishing. Fishermen who choose to exit the fishery may receive economic benefit if they sell their QS harvest privilege. The burdens on fishermen who do not receive an initial allocation of QS and on society as employment patterns shift, and other transition costs, are discussed throughout the FEIS.

#### Magnuson Act Section 303(b)(6)

Section 303(b)(6) of the Magnuson Act provides for the establishment of limited access management systems in order to achieve OY if, in developing

such a system, the Council and Secretary take into account: (1) Present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels used in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations. Section 5(c) of the Halibut Act also requires any limited access regulations for halibut to be consistent with section 303(b)(6) of the Magnuson Act.

The IFQ program will enhance the achievement of OY by reducing the risk of overfishing, decreasing rates of fishing mortality due to deadloss and discard waste, and increasing economic benefits to fishermen and to the Nation. The risk of overfishing is reduced because consolidation of fishing effort under the IFQ program will lead to a more manageable fishery. The program involves improved reporting systems to determine harvested amounts of halibut and sablefish more accurately. Fishing mortality due to deadloss and discard waste will be reduced as the pace of fishing is slowed. Under the IFQ program, fishermen will maximize the value of their harvest while minimizing fishing costs instead of trying to maximize the amount of fish harvested as in the current open access fisheries. This focus on value and cost will provide an incentive to increase the care taken in setting and retrieving gear. The incidence of lost fishing gear, and its attendant deadloss due to ghost fishing, will decrease. Gear conflict that results in lost gear also will decline as fishing grounds will be less crowded under a longer fishing season. Catches of legal-sized halibut and sablefish that are made incidental to fishing for other species with fixed gear may be retained if the vessel operator has unused IFQ. This will reduce wasteful halibut and sablefish mortality due to bycatch. The bycatch of non-IFQ species also should be reduced because fishermen will have more time to release carefully these species to maximize their survival. Waste of Pacific cod and rockfish caught in conjunction with IFQ species will be reduced because of the requirement to retain these species unless otherwise directed by other State or Federal rules. Economic benefits to fishermen will result from increased value of their halibut and sablefish landings. Fishermen will be given an increased incentive under the IFQ program to improve handling of their product to reduce spoilage and increase market value. Fishermen will be better able to

time their fishing activities with peaks in the market value of halibut and sablefish. Further, fishermen will have an increased interest in the health of the resource as a result of their investment in QS. Economic benefits to the Nation have been estimated to be in the range of \$30.1 million to \$67.6 million (FEIS p. 6-2).

*Present participation in the fishery.* For purposes of the IFQ program, "present participation" is defined by the initial allocation qualifying criteria: ownership or lease of a vessel that made fixed gear landings of halibut or sablefish at any time during 1988, 1989, or 1990. The Council developed these criteria after consideration of earlier years and ways of participating in the fishery other than by vessel ownership or lease. The Council's rationale for the specified qualifying years was that they provided a reasonable time in which to demonstrate dependence on the fishery. Including earlier years would allow more fishermen to qualify that have since exited the fishery and are no longer participating. Consideration of later years was abbreviated because the Council, which was formulating this policy in 1991, did not want to exacerbate overcapacity in the fishery by allowing speculative fishing in that year and subsequent years to qualify for an initial allocation of QS. Distribution of initial QS to persons participating in any of the 3 qualifying years will allocate QS to some persons who have not participated in 1991, 1992, or 1993, but fewer such persons will receive an initial allocation than under other options considered by the Council.

The Council's consideration of "present participation" also included the form of involvement in the fishery (e.g., as a vessel owner, crew member, or processor). As explained under national standard 4, above, the Council perceived vessel owners and lease holders as the most directly involved persons in terms of capital investment. The conservation and management problems resolved by this program stem largely from excess capital in the fisheries. Therefore, it is reasonable to define the group of persons who make the capital investment decision to either enter or exit a fishery as "present participants" for initial allocation purposes. The IFQ program does not deny the opportunity for other participants to continue participating as they have done as crew members or in some other capacity. The extent to which employment opportunities are likely to be affected is discussed in sections 2 and 3 of the FEIS.

*Historical fishing practices in, and dependence on, the fishery.* The Council

considered a person's record of landings in a fishery as the most important indicator of that person's dependence on the fishery. Investment in, or size of, a vessel was rejected as an important indicator because small vessels may sometimes harvest more fish than large vessels. Equal allotments would benefit participants with relatively low landings at the cost of those with relatively high landings (FEIS sec. 7.0). The Council also considered the unique characteristics of the halibut and sablefish fisheries in formulating the IFQ program. The fact that these fisheries are prosecuted mostly by small, owner-operated vessels was repeated often in public testimony. The Council also was aware of the special relationship between vessel owners and fish processors, and vessel owners and crew. Council consideration of these current practices and dependencies resulted in numerous limitations on control, use and transferability of QS. These limitations stem from a profound concern that the IFQ program could cause too much change in current fishing practices. A general description of the fishery is given in the FEIS.

*Economics of the fishery.* The economics of the halibut and sablefish fishery were a central concern to the Council and a motivating influence to develop the IFQ program. Six of the ten conservation and management problems identified by the Council are economic problems (see "Background" above). Moreover, as a resolution to these problems, the IFQ program will have economic effects on the fishery. The Council's consideration of economic factors and the potential effects of the IFQ program and other alternatives is the subject of most of the FEIS.

*Capability of fishing vessels used in the fishery to engage in other fisheries.* The IFQ program does not require the departure of any vessel from the halibut and sablefish fisheries. However, a reduction in fleet size is expected as owners of less efficient vessels market QS to owners of more efficient vessels (within vessel category limitations). Hence, vessel owners or lease holders voluntarily leaving the IFQ fisheries will be compensated to some extent. This is in contrast to overcapitalized open access fisheries in which exit frequently results from bankruptcy. The FEIS describes the fixed gear fisheries as multi-species. The IFQ program will allow small amounts of QS to be used for the landing of halibut or sablefish that are taken incidental to the targeted harvesting of other species. Fishermen may choose not to acquire large amounts of QS to conduct targeted harvesting of halibut or sablefish. Fixed

gear fishing vessel owners who choose to hold no QS may use their fishing vessels in other fisheries. The potential effects on these other fisheries is discussed in the FEIS (sec. 4.0).

*Cultural and social framework.*

Development of the IFQ program has been controversial for the Council and the Secretary primarily because of changes this management policy can bring to the current cultural and social fabric of the fishery. A key concern of the Council was a means of providing for economic rationalization of the fishery while preventing undue cultural and social disruption. Frequent public comment to the Council on cultural and social aspects relevant to the fishery maintained the importance of these issues: The Council considered, described, and assessed relevant cultural and social issues in the FEIS.

*Other relevant considerations.* Vessel and crew safety was an important consideration in developing the IFQ program. The short and infrequent fishing seasons for halibut, especially in the GOA, often compel fishermen to risk their vessels and lives to fish in poor weather instead of waiting for the weather to clear and miss the fishery. This was one of the 10 problems identified by the Council and is characteristic of overcapitalized open access fisheries. The IFQ program will resolve this problem by allowing fishermen to choose when they will go fishing within a 9-month period. Fishing can be postponed due to poor weather conditions, if necessary, or when the crew is fatigued. Although the IFQ program will not prevent casualties at sea, it is designed in part to allow fishermen to make sensible judgments that will enhance their safety.

**Changes From the Proposed Rule in the Final Rule**

The IFQ program implemented by this rule is described at length in the proposed rule notice published on December 3, 1992. The principal parts of the program remain as discussed in that notice. These include initial allocation of QS, annual allocation of IFQ, transfer provisions, limitations on IFQ harvests and QS use, monitoring and enforcement provisions, and the western Alaska CDQ program. However, some changes from the proposed rule are made in the final rule in response to comments received. Changes made in response to comments received are addressed in "Response to Comments" below. Other changes are made to clarify the intent and effectiveness of the regulations and improve their parity with the language of the Council's December 8, 1991, motion approving the

IFQ program and the FMP amendment text for Amendments 15 and 20. Principal changes made for clarification purposes are as follows:

1. In accordance with the requirements of section 3507(f) of the Paperwork Reduction Act, § 204.1(b) is revised to include the display of the Office of Management and Budget (OMB) control numbers assigned for the IFQ program.

2. Sections 672.2, 675.2, and paragraph 675.24(c)(1) are removed from the proposed rule. In addition, the term "fixed gear" in § 675.20(a)(3) is changed from the proposed rule to "hook-and-line and pot gear" and the definition of "fixed gear" in § 676.11 is changed from the proposed rule. These changes are necessary to clarify that the sablefish TAC allocation scheme is not changed by the IFQ program. Allocation of sablefish TAC between fishing gears began in the GOA in 1986 and in the BSAI in 1990 pursuant to approved amendments to the respective FMPs. For the GOA, the FMP and its implementing regulations at § 672.24(c) specifically divides the sablefish TAC between hook-and-line gear and trawl gear. These two gear types are defined at § 672.2. Pot gear and other types of gear comprised of hooks and lines (e.g., hand lines, jig, or troll gear) are specifically not allowed to retain sablefish. In the BSAI, the FMP and its implementing regulations at § 675.24(c) divides the sablefish TAC between hook-and-line and pot gears and trawl gear. Again, other gear types are not allowed to retain sablefish. However, the FMP amendment text for the IFQ program indicates that the program is applicable to the "fixed gear" fishery and defines "fixed gear" as including all hook-and-line fishing gears, including longline, jigs, handlines, troll gear, etc., and pot gear in the BSAI. For consistency with the proposed FMP amendment text, the proposed rule defined "fixed gear" as all groundfish pot gear and hook-and-line gear, including longline, jigs, handlines, troll gear, subject to other gear restrictions in parts 672 and 675. This language would have allowed for the exclusion of pot gear in the GOA, for example, but it also would have required changing the sablefish TAC allocation regulations from the specific "hook-and-line gear" (and pot gear in the BSAI) to the more general "fixed gear." NOAA has determined that such a regulatory change, as contemplated in the proposed rule, would require FMP amendments in addition to the amendments implemented by this final rule; this is because the provisions of the current FMPs that allocate the

sablefish TAC among gear types explicitly do not include jigs, handlines, and troll gear (and pot gear in the GOA) and were not modified by these amendments. Hence, the revised "fixed gear" definition in the final rule more clearly specifies which gear types are affected by the IFQ program and is more consistent with existing FMP requirements on TAC allocation.

The fixed gear definition with respect to halibut includes jigs, handlines, and troll gear in addition to the common setline or hook-and-line gear. This difference between sablefish and halibut fisheries results from the more general "hook-and-line gear" specified at § 301.17 as required for the harvesting of halibut. This regulation allows any gear that uses hooks and lines to harvest halibut. Hence, jigs, handlines, and troll gear that employ hooks and lines can be used to land halibut under the IFQ program. Another simplifying factor is that the halibut catch limit is not specifically allocated between trawl and other gear types.

3. The definition of "catcher vessel" is changed by making an exception for a freezer vessel that acts as a catcher vessel during a fishing trip. This change clarifies § 676.22(i)(3) which allows the use of catcher vessel IFQ on a freezer vessel provided that no processed products of any species are onboard the vessel during a fishing trip on which catcher vessel IFQ is being used. This change also improves the distinction between the two types of vessels based on whether processing occurs during a fishing trip or during a fishing year.

4. The definition of "dockside sale" is moved to the definitions section (§ 676.11) from § 676.14(d) because the term is used also in other paragraphs. The definition is revised to clarify that dockside sales are transfers of IFQ fish from the harvester to individuals for personal consumption, and not for resale. Such transfers to non-registered buyers will require the harvester to hold a registered buyer permit in addition to an IFQ permit and card. Further, the text of §§ 676.13(a)(2) and 676.14(d) is revised to clarify the conditions under which registered buyer permits will be necessary, and indicate that landings of IFQ fish outside of an IFQ regulatory area or the State of Alaska must be treated in the same manner as a dockside sale. These changes are made to clarify the requirements of dockside sales and IFQ landings outside of an IFQ regulatory area or the State of Alaska. The changes also clarify the reporting requirements of registered buyers.

5. The definition of the sablefish CDQ reserve is changed to reflect the correct proportion of the sablefish fixed gear

TAC as 20 percent. The proposed rule incorrectly specified 12 percent. Notice of this mistake was published on December 29, 1992 (57 FR 61870).

6. IFQ permits will not include the metric tonnage of the initial allocation for the permit holder. Instead, a statement will accompany the permit which will indicate the amount allocated to the IFQ permit holder. Sections 676.13(b)(1), 676.20(f)(3), and 676.21(e) were reworded to reflect this change.

7. A new paragraph is added at § 676.16(b) to prohibit the intentional submission of false information. In combination with § 676.16(a), the new paragraph emphasizes the need to provide truthful, accurate information on any reports, applications or statements required by the IFQ program. Former § 676.16(b) is redesignated § 676.16(c) and so on through this section.

8. Also in § 676.16, the prohibition against retaining IFQ fish without an IFQ card in the name of "the individual" is changed to "an individual" to clarify that any individual onboard a vessel, who holds an IFQ card with valid IFQ for the IFQ regulatory area and vessel category in which the vessel is operating, may use it to retain halibut or sablefish on the vessel. As used in the proposed rule, this paragraph may have been misinterpreted to mean that only the person responsible for the harvesting activity, such as the vessel owner or operator, had to have an IFQ card. This interpretation would be inconsistent with provisions for IFQ crew members to add their own IFQ to that of the vessel's owner or operator to increase the harvesting potential of the vessel. One or more IFQ permit and card holders, other than the vessel owner or operator, may harvest IFQ fish from the same vessel, up to the vessel limitations specified at § 676.22(h).

9. Section 676.16 is also changed by deleting former paragraphs (n) and (o), and adding a new paragraph (o). The deleted paragraphs were determined to be redundant. The new paragraph prohibits a person from operating a vessel as a catcher vessel and freezer vessel during the same fishing trip. This change adds clarification to the revised catcher vessel definition at § 676.11 (see also change 3 above).

10. To further clarify qualifications for initial allocations, an addition is made to § 676.20(a)(1) stating that sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in the determination. Additionally, evidence of legal landings, for initial QS

calculation purposes, is specifically limited to state and Federal catch reports at § 676.20(a)(1)(v). Text is added to this paragraph to clearly specify that a state catch report is an Alaska, Washington, Oregon, or California fish ticket that has been submitted in compliance with regulations of the respective state that were in effect at the time of landing. A Federal catch report is described as a weekly production report submitted in compliance with 50 CFR 672.5(c) or 675.5(c) at the time of landing. Other types of documents that report landings of fish will not be considered evidence of legal landings for purposes of initial allocation of QS.

11. The adjective "initial" is added before QS in § 676.20(b) to emphasize that the modification of QS to accommodate the CDQ program will occur only once with the calculation of the initial QS allocation. The CDQ adjustment will occur at the IFQ level after determination of a preliminary QS. If fishing under the IFQ program begins in 1995, then the TACs used for this purpose will be those specified for 1994. The modified IFQ (after the CDQ adjustment) then will be the basis for recalculating the initial QS. The reason for this approach is that the TACs for halibut and sablefish are not specified until late January or early February. Use of the previous year's TAC specifications will allow calculation and issuance of initial QS prior to February of the first year of fishing under the program. In addition, this will allow for an ample period of time to effect transfers of QS before the IFQ calculation date specified in § 676.20(f)(2).

12. The confidentiality of proprietary catch data is protected under current state and Federal law. Basically, these regulations prohibit the release of any catch or landings data to anyone other than the person who submitted the state fish ticket or Federal catch report. Exceptions to this rule allow for the release of aggregated data (of 3 or more persons) and the release of data to a third party if the person to whom the data are confidential signs a statement waiving his or her protection of confidentiality. These rules will affect the calculation of initial QS as described at § 676.20(b). The Regional Director will comply with state and Federal laws regarding confidentiality. These confidentiality laws could complicate the initial distribution of QS. If a person who qualifies for an initial allocation of QS had a crew member report a landing on a state fish ticket, the reported catch on that fish ticket would be confidential to that crew member. The Regional

Director would not be able to release those landing data to the qualified person unless the crew member signed a waiver or the qualified person obtained a court-ordered release. This clarification is necessary to alert qualified persons that the application process for QS is subject to state and Federal confidentiality laws and that it is their responsibility to secure the necessary waivers from other persons who may have landed halibut or sablefish on their behalf.

13. The IFQ calculation date in § 676.20(f)(2) of December 31 is changed to January 31 to allow more time for QS transfers to affect IFQ allocations prior to the beginning of the fishing season on March 1 of each fishing year. In addition, this change will allow QS transfers to occur through the annual meeting of the IPHC, at which the current year's catch limit of halibut is established. Calculation of halibut IFQs is partly based on the halibut catch limits established by the IPHC.

14. A new paragraph is added at § 676.20(g) to clarify the interests of QS, IFQ, and permit holders.

15. Two changes are made in § 676.22(e). The first changes the sablefish QS use limit to 1 percent of the combined total sablefish QS instead of the total fixed gear TAC. This change more accurately reflects the language of the Council's motion and the approved FMP amendment text, and makes this limit consistent with that for halibut in the following paragraph (see response to comment 67). The second change corrects a drafting oversight by changing "140° east" to "140° west" longitude.

16. In § 676.22(i)(2), "sablefish IFQ" is changed to "sablefish QS." This change corrects a drafting oversight and clarifies that the exemption provided in the preceding paragraph applies to initial allocation of sablefish QS consistent with its application to the initial allocation of halibut QS.

17. Section 676.23 is deleted as redundant to §§ 676.10 and 676.11. Former §§ 676.24 and 676.25 in the proposed rule are renumbered as §§ 676.23 and 676.24, respectively.

18. Minor changes to § 676.24 include additional language in paragraph (c) to stress that materials in possession of the State of Alaska pertinent to hearings may be released only under State and Federal confidentiality laws. In paragraph (f)(2)(i), the coast of the Chukchi Sea is added as a location where a community would not be eligible for the CDQ. Also, paragraph (f)(5)(iv)(E) adds a factor that the Governor must consider prior to recommendation of a CDP.



19. Compensations of additional halibut and sablefish QS for amounts foregone due to the CDQ program are clarified by making two changes in § 676.24(i) (formerly § 676.25(i)). First, "IFQ" is changed to "QS." This change improves consistency with the text of the Council's motion. Also, this change should make calculation of the compensation faster because the calculation would be based on the QS pool as of January 31 instead of waiting for final TAC specifications on which to base IFQ calculations. Second, a new paragraph (i)(3) is added to clarify that the compensation will occur only once, in the first year of fishing under the IFQ program, and it will be based on the QS pool in each IFQ regulatory area as of January 31 of the first year of fishing under the IFQ program. These are the same QS pool amounts that will be used for calculating IFQs that year pursuant to § 676.20(f)(2).

20. Explanations for additional changes to the final rule's regulatory text from the proposed rule may be found throughout the Response to Comments section.

#### Response to Comments

The IFQ program has been controversial in its development, review, and approval primarily because it will fundamentally change the current method of managing the halibut and sablefish fisheries and will limit access to them. Hence, public testimony and comment to the Council, NMFS, and the Secretary has been voluminous. Comments received on the draft SEIS/EIS are summarized and responded to in the FSEIS/EIS. The following summary includes only those comments on the proposed rule that were received by the comment deadline of January 11, 1993. Of these, 49 letters from 62 individuals expressed support for the proposed action while 30 letters from 32 individuals were opposed. Some letters in each category also included attachments of other letters, petitions, and news articles. Points raised in the attachments generally reiterated or reinforced the points made in the letters to which they were attached. Another 13 letters expressed neither support nor opposition but made technical comments or recommended certain changes in the regulations. This group of letters includes several that responded to an expressed interest by the Secretary in comments on efficiency constraints proposed by the Council. Letters of support and opposition also made specific recommendations for change.

*Comment 1:* The IFQ proposal intends to allocate publicly-owned common

property to a limited class of fishermen, and to use public tax dollars to fund the administration of this program for the benefit of these special interests. The Magnuson Act should be amended to provide the public with a fair return on the public fishery resources to avoid unnecessary windfall profits to a few at great cost to the public. All industries must pay for their raw materials in producing any product for profit. The fishing industry's raw materials are the public's fish which currently are free. The fishing industry should pay the public for the use of its resources and their management.

*Response:* Neither the Magnuson Act nor the Halibut Act provides authority to charge resource user fees or rents. In the coming months, NOAA will be participating in a broad review of user fees or rents, which will include evaluation of alternatives for applying them in appropriate fisheries. This could result in charging fees for initial and subsequent allocations of QS, IFQ, or landings, or any combination of these, in the sablefish and halibut fisheries. NOAA will seek the views of interested parties during this review. While the IFQ program will benefit the Nation, and is consistent with current law, public benefits can be increased from resource user fees or rents.

*Comment 2:* The IFQ program is the only alternative that addresses all ten problems identified by the Council. The IFQ program offers the best chance of solving current industry problems including safety, marketing, and overcapitalization. No other alternative better solves the problems of resource waste, overcrowding, product quality, safety, and bycatch. Problems of discarding, and gear conflict should be resolved by the IFQ program while increasing economic benefits and improving biological conservation. Open access and traditional management techniques are not working. The IFQ program is based on free-market principles commonly used in the private sector; it is a pro-business plan. Current management results in extremely short fishing seasons which are dangerous and wasteful. The IFQ program would reduce waste of bycatch, fuel, fishing gear, ice, cold storage, and loss of life at sea. The program has been thoroughly analyzed and benefits from ample public review and participation in its design over the past 5 years. The unsafe fishing conditions that fishermen are forced to endure as a result of extremely short openings is a critical flaw of current management. Fisheries management should take responsibility for the safety and welfare of fishermen affected by regulations in addition to

conservation and management of the fishery. The program will increase economic benefits from the fisheries and improve biological conservation by making the fisheries easier to manage. Consumers will benefit by having a steady supply of fresh fish to the market. The program is rational; initial allocations reward participation in the fisheries proportionately. Fishermen will have a personal stake in the fishery under the IFQ program which will foster a stewardship attitude toward the resources and their environment. Similar IFQ-type programs have proven successful in other fisheries. The IFQ program should be approved in its entirety. There should be no partial disapproval of transfer restrictions as these are necessary to mitigate socio-economic impacts that will occur if historic delivery patterns are disrupted or the traditionally diverse fleet is displaced. Further prevention of excessive fleet consolidation may be needed.

*Response:* Comment noted. NOAA agrees with most of these points and supports the IFQ program. However, limited access regimes are not appropriate for all problems affecting the fishing industry. Some traditional management measures will continue to be used and others may be necessary to prevent overfishing or other conservation problems if the IFQ program is not adequately addressing such problems.

*Comment 3:* Adoption of the IFQ plan will result in lost jobs for up to 12,000 fishermen in the halibut fleet and 2,600 fishermen in the sablefish fleet. It is unlikely that all of these fishermen will be able to move to other fisheries. The impact of such job loss on communities and fishing-related industries is not fully addressed.

*Response:* The Council and the Secretary carefully assessed the potential social and economic effects of this IFQ system. Although the number of employment opportunities fishing for and processing halibut and sablefish are likely to decrease with the intended consolidation of the fleet, the fishing and processing positions that remain should be more secure and better paid. The fishing seasons in the halibut and sablefish fisheries currently are so short that most fishermen cannot depend on them for full-time employment. There is little employment security in the halibut and sablefish fisheries currently under open access management. Extremely short fishing seasons under open access force vessel owners and processing plant operators to rely more on part-time transient labor instead of full-time resident labor. Stability in the

participation of fishing vessel owners also is not high currently. Of the approximately 8,000 vessel owners who participated in the halibut fishery between 1984 and 1990, only 9 percent participated in all 7 years (FEIS 2.2.18). The IFQ program could provide greater employment security by increasing the use of a coastal community's resident labor force and decreasing the use of transient labor (FEIS 2.2.16). The fishermen likely to leave the fisheries under the IFQ program will be occasional or part-time fishermen. Career or full time-fishermen are more likely to increase their stake in the IFQ fisheries and enjoy greater economic stability and security in their employment than they currently experience.

*Comment 4:* The IFQ plan is unfair because it would take a public resource worth millions of dollars that everyone has access to and give it to a privileged few. This would unfairly force traditional small-boat fishermen out of the fishery and replace them with large corporations or, like other limited entry programs, will result in rich doctors and lawyers having the permits. This would prevent many small-boat fishermen from being able to improve their boats and gear. Since most of the benefits of the program would be captured by relatively few individuals, a large number of individuals currently working in the fisheries would be unemployed and increase the burden on social services. Management should spread out access to the resources to keep more people working and protect against the concentration of harvesting by a privileged minority.

*Response:* Seeking maximum participation in a fishery is a management policy that may be appropriate for some fisheries. The Council did not consider it an appropriate policy to achieve OY from the halibut and sablefish fisheries, however, because it exacerbated numerous conservation and management problems and resulted in wasted value from an important national resource. The addition of more harvesters or more fishing effort to a fishery with a finite production capability at some point will not yield more product. The halibut and sablefish fisheries have surpassed that point, but more fishing effort was continually added in recent years resulting in decreased fishing seasons (FEIS 1.3.2, July 19, 1991, and Fig. 1.1, Nov. 16, 1989) and the 10 conservation and management problems identified above (see Background). The Council's IFQ management policy is carefully crafted, however, to prevent the opposite

extreme of minimizing participation in the fisheries. To the extent practicable, it is designed to retain the social and cultural framework relevant to the fisheries. For example, it includes constraints on the transfer of QS among vessel categories and requires catcher vessel QS holders to be onboard during fishing operations. The traditional small-boat fisherman will not necessarily be forced out of the fishery. However, if he decides to leave the fishery, a small-boat fisherman will likely transfer his QS to another small-boat fisherman. Policies like this reflect the concern expressed by the Council, the fishing industry, and the affected public about excessive consolidation of fishing privileges and disruption of the traditional fixed gear fishing fleet.

*Comment 5:* The cultural and social framework of the fishery was not taken into account in formulating the IFQ plan. The culture of Alaska contains the philosophy of "common use" and an abhorrence of "exclusive right or special privilege fishery," concepts embodied in the State's Constitution.

*Response:* The Council and the Secretary adequately took into consideration the cultural and social framework relevant to the fisheries in developing the IFQ program as required by the Magnuson Act and the Halibut Act. Evidence of this consideration is in the FEIS which is comprised of several analyses. These include the original draft dated November 16, 1989, which was supplemented by drafts dated: (1) May 13, 1991; (2) July 19, 1991; and (3) March 27, 1992. The most recent FEIS document, dated September 15, 1992, summarizes and responds to comments on the March 27, 1992 draft. The November 1989 draft contains a description of the economic and social environment (Chapter 3). This section describes commercial fishing activities, their relationship to the processing and marketing sectors, social and cultural characteristics of the fisheries, and coastal communities. Detailed descriptions of fleet structure, population, employment, history, demographics, and culture also are contained in this document or referenced. This analysis examines the likely effects of alternative management strategies and evaluates the efficacy of each alternative. The July 1991, analysis contains a detailed description of the economic and social environment of the halibut fisheries. Chapter 4 of the document compares IFQ management with open access in regard to 28 parameters including economic stability in affected coastal communities, employment, and anticipated effects on fishing operations. Chapter 5 of the July

1991 document contains a detailed description of the social environment of the halibut fishery. Specific demographic profiles of affected coastal communities are provided that address the relative importance of the halibut fishery to each community and the size, composition, and stability of the resident work force as it relates to fisheries. The March 1992 analysis contained another assessment of potential coastal community impacts (Chapter 3) that includes the potential for QS/IFQ to move away from coastal communities as has occurred in the State's salmon limited entry program. Consideration of the social and cultural framework of the fishery resulted in numerous constraints imposed on the transfer and use of QS and IFQ (§§ 676.21 and 676.22). These constraints will be costly in terms of foregone economic efficiency of the fleet but are nevertheless necessary to prevent undue disruption in the social and cultural framework of the halibut and sablefish fisheries.

*Comment 6:* The program expropriates existing private property rights in the common property fishery and reassigns property rights to a new group of persons using arbitrary criteria. Those from whom property rights are taken should be compensated.

*Response:* There are no private property rights in wild fish before they have been reduced to one's possession. Therefore, no private property has been taken, no property rights have been reassigned, and no compensation is due. The assignment of transferable harvesting privileges to persons who owned or leased a fixed gear fishing vessel that made landings of halibut or sablefish in 1988, 1989, or 1990 is reasonably based on information, available to the Council at the time that it made its decision, on present participation in, and current dependence on, the fisheries.

*Comment 7:* The IFQ program amounts to a takeover of our natural resources by the Federal Government. Fishermen should not have to pay for a harvesting privilege that is already their Constitutional right.

*Response:* There is no provision of the U.S. Constitution that guarantees anyone a right to fish. The IFQ program does not amount to a "takeover" of the halibut and sablefish resources by the Federal Government. The Federal Government is responsible under the Magnuson Act and the Halibut Act to conserve and manage these and other fishery resources for the benefit of the Nation. Limited access management programs are authorized by these laws as necessary to achieve OY.

*Comment 8:* The IFQ program does not privatize ownership rights to individual fish stocks but only to the right to harvest certain species. Therefore, the "race-for-fish" problem is not solved but limited only to a privileged and protected group.

*Response:* Under open access and license limitation programs, all fishermen harvest fish from the overall catch quota. Therefore, fishermen who harvest faster harvest more fish than slower fishermen by the time the common quota is reached and authorities close the fishery. Under the IFQ program, fishermen, limited by their individual quotas, need not race for a share of the total quota. Instead, they can direct their efforts at reducing the cost of their operations and improving product quality.

*Comment 9:* The claim that ownership of harvesting rights will promote stewardship of the resource is not true. The long-term detrimental effects of abusive behavior are shared by all industry participants, not just the abusive individual, thereby reducing incentive for an individual to take responsibility for his own behavior.

*Response:* Fishermen who hold QS have an individual interest in the halibut or sablefish resource. Individual behavior that degrades that interest, such as underreporting or discarding dead fish that should be counted against an IFQ, could adversely affect the harvesting potential of QS or the future value of QS when the QS holder decides to leave the fishery. As abusive behavior is more likely to be noticed by other fishermen than by the Government, the IFQ program is expected to foster a cooperative effort in enforcing the IFQ rules. Fishermen who invest in the fishery by buying QS will more likely hold a long-term view of their industry and seek to recapture their investment costs and make a reasonable profit year after year. An open access fishery, on the other hand, inspires a short-term perspective because investment or entry costs are relatively low and the costs of resource abuse are spread over a large number of fishermen. Consolidation of the fleet under the IFQ program will increase the cost of resource abuse to individuals remaining in the fishery. The IFQ program will likely inspire more individual responsibility for resource stewardship, not less. Furthermore, it is conceivable that the underreporting by one IFQ holder that potentially causes the TAC to be exceeded in one fishing year could result in a decreased TAC and correspondingly lower IFQs the following year.

*Comment 10:* Initial allocation of fishing privileges to "present participants" is only indirectly related to present participation. Fishers' catch history is only the outcome of their participation (i.e., the score of the game). Investment in the fisheries, for example, is more indicative of participation.

*Response:* The Magnuson Act and the Halibut Act require the Council and the Secretary to take present participation in, and dependence on, the fishery into account in developing limited access systems. The Council chose to use catch history over a specified period of time as an indicator of present participation in, and dependence on, the fishery. NOAA agrees that a person's catch history provides a reasonable indication of that person's participation in, and dependence on, the fishery. Investment also may be an indication of these factors, but investment data would be more cumbersome to use and verify because of difficulties in acquiring and interpreting such data.

*Comment 11:* The initial allocation to those who invest (in fishing vessels) would unfairly allocate a valuable asset to relatively few fishermen and businessmen who own vessels to the exclusion of the vast majority of fishermen who crew and operate the vessels. This would make vessel owners and lease holders "fishermen" regardless of their participation in the fishing activity of their vessel. Crew members and captains who actually fished would be excluded from receipt of QS regardless of the years of personal investment they have as real fishermen. By discriminating between fishermen who are vessel owners and fishermen who are crew members, the IFQ program would violate the Halibut Act which strictly prohibits discrimination between any fishermen, not just fishermen from different states. Moreover, it would effectively redefine "fishermen" as "investors" and would violate national standard 4 of the Magnuson Act and the Halibut Act, which require allocations to be fair and equitable to all fishermen. Financial investment in the fishery should not be the only criterion for getting QS.

*Response:* The Council chose vessel ownership or lease as a criterion for initial allocation of QS because of the financial risk that such persons assume in undertaking a commercial fishing enterprise. Persons who bear this financial risk are the persons who make the decision of whether to enter or exit a fishery and affect the amount of capital in a fishery (see response to comment 13). However, financial investment in a fishing vessel is not the

only criterion for receiving an initial allocation of QS. Vessel owners or lease holders also must demonstrate that halibut or sablefish were landed by their vessels during certain years. No investment in a fishing vessel is required to receive transferred QS. Neither term "fishermen" nor "investor" is defined in the Magnuson Act or the Halibut Act. For allocation purposes, a vessel owner or lease holder is a "fisherman" as much as a person who physically handles fishing gear and fish. The Magnuson Act and the Halibut Act authorize such allocations, but stipulate that they be fair and equitable, reasonably calculated to promote conservation, and carried out in a manner such that no particular individual, corporation, or other entity acquires an excessive share. The Guidelines at 50 CFR 602.14(c) help interpret these criteria. An "allocation" or "assignment" of fishing privileges is defined as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals (§ 602.14(c)(1)). The advantaging of one group to the detriment of another is inherent in an allocation. Allocations do not have to preserve the status quo in a fishery to qualify as "fair and equitable." This criterion can be satisfied if the allocation is rationally connected with the achievement of OY or with the furtherance of FMP objectives, and if the hardship imposed on one group is outweighed by the total net benefits to all. The Council's decision to allocate QS initially to vessel owners and lease holders who made landings of halibut and sablefish during certain years and not to any other U.S. fishermen satisfies this criterion as discussed above under national standards 1 and 4. This allocation promotes conservation and the achievement of OY by encouraging a more rational use of the resource and optimizing the market value of the yield. Net benefits to the Nation are evident from the FEIS (see summary of costs and benefits in FEIS sec. 6.0). Finally, the IFQ rules developed by the Council sufficiently prevent the acquisition of an excessive share either in the initial allocation or subsequent transfer of QS. Therefore, the initial allocation of QS to vessel owners and lease holders and not to crew members is consistent with the anti-discrimination provisions of the Magnuson Act and Halibut Act.

*Comment 12:* The proposed requirement for an initial allocation of QS does not take into account present participation. It would exclude vessel

owners with long-term history of participation in the halibut fishery prior to 1988 and subsequent to 1990. The qualifying period for halibut QS should be expanded to include years earlier than 1988. The effect of the 3-year qualifying period on the halibut fishery is to exclude about 2,500 participants from receiving an initial allocation. Most of these participants are small-vessel fishermen. Their exclusion from an initial allocation serves to benefit the large-vessel fishermen. The IFQ program unfairly favors newcomers into the fishery. There should be a "grandfather" provision to award shares to those who pioneered the fishery.

*Response:* NOAA finds no inherent bias in favor of large vessels in the initial allocation of QS because the distribution of vessel size during the 3-year qualifying period is roughly the same as that immediately before and after the period. When the Council discussed the qualifying period, it reasoned that a qualifying date earlier than 1988 would include fishermen who have since retired or otherwise left the fisheries, and consequently have not demonstrated sufficient present participation in, and current dependence on, these fisheries to merit an initial allocation of QS. The Council wanted, to the extent possible, to grant initial allocations of QS to currently active participants in the fisheries. However, the Council chose to exclude landings after 1990 because the Council had only incomplete data on 1991 participants when it made its final decision to approve the IFQ program in December 1991. Moreover, the Council chose not to base initial allocations on prospective participation in 1992 and 1993 because this would stimulate entry into the fisheries in those years by persons who have not been historical participants, thereby exacerbating the conservation and management problems that the Council is attempting to resolve.

*Comment 13:* Crew members do not get paid a wage; everyone shares equally in the risk of a fishing operation. Fishing is a share-basis enterprise. Hired skippers and crew members are self employed, they own their share of the catch, and are responsible for their social security and unemployment taxes. As such, they are independent contractors, not employees, for purposes of taxes and benefits. The vessel owner is often absent during fishing operations. Therefore, it is unfair to give vessel owners a valuable harvesting right based on the crew's share of the catch. A proposal to give crew members an initial allocation of QS based on their average share of the catch over the qualifying years was discounted by the

Council as too complex, but without it the plan would concentrate 100 percent of the ownership of the resource in the hands of 20 percent of the work force that harvests it. Crew members would be prevented by the IFQ program from moving up in the profession, and may be prevented from finding any fishing job as the size of the fleet decreases. It would narrow the options for those who have participated as deckhands and boat operators. The IFQ plan would take away the livelihood of crew members, without compensation, so that others can have a more lucrative and convenient work environment, and hold an exclusive fishing right in perpetuity. This would violate the Magnuson Act.

*Response:* NOAA finds no violation of the Magnuson Act or the Halibut Act by implementing the allocation of fishing privileges as prescribed by those laws. The advantaging of one group to the detriment of another is inherent in an allocation and is consistent with the Magnuson Act and Halibut Act if certain criteria are satisfied (see discussion of national standard 4 and section 303(b)(6) above, and response to comment 11). The Council considered allocating QS to crew members but decided against it because of the practical difficulties of documenting crew shares. Instead, the Council decided to give eligibility for initial allocations only to vessel owners and lease holders because they have a capital investment in the vessel and gear that continues as a cost after crew and vessel shares are paid from a fishing trip. However, the IFQ system does not ignore crew members or prevent them from "moving up" in the fishing profession or continuing to find crewing positions. Skilled crew members should be more in demand under the IFQ program if they can contribute to the value of the fish products and lower costs of fishing. Crew members who purchase QS also will be in demand for the added harvesting potential they will bring to a vessel. The IFQ program provides for enhanced safety for crew members who work in one of the most hazardous work environments. For these reasons, professional fishing vessel crews in the halibut and sablefish fisheries are expected to be better off under the IFQ program than under open access management. Finally, the IFQ program does not grant anyone an exclusive fishing right "in perpetuity." Although the IFQ program is expected to continue indefinitely, it is subject to refinement, amendment, or even repeal as a result of subsequent decisions by the Council, the Secretary, and the U.S. Congress.

*Comment 14:* The definition of "IFQ crew member" precludes individuals who do not receive an initial allocation of QS from acquiring catcher vessel QS in the future. This is because the word "and" would require both conditions, experience and an initial allocation, to be met before receiving a transfer of QS. In addition, the definition creates a special class of U.S. citizens that has exclusive access to the halibut resources. This definition is not fair and equitable to all U.S. fishermen and consequently violates national standard 4.

*Response:* NOAA agrees that the word "and" in the proposed definition of "IFQ crew member" at § 676.11 is too restrictive because it would prevent entry of new fishermen into the halibut and sablefish fisheries. In this action "and" is replaced by "or." This change clarifies that both conditions, experience and receipt of an initial allocation, are not necessary to qualify as an IFQ crew member, but either condition will suffice. Although the definition does create a "special class," it is not a closed class since any person with at least 150 days experience working as part of the harvesting crew in any U.S. fishery could qualify for catcher vessel QS, even though that person did not receive an initial allocation. The Council determined that only IFQ crew members should be able to acquire and use catcher vessel QS as a means of fostering professionalism in the catcher vessel fleet. Professionalism developed from commercial fishing experience also is likely to enhance vessel safety. Therefore, NOAA finds no violation of national standard 4 (see discussion of "fair and equitable" in response to comments 11 and 13).

*Comment 15:* The proposed regulations would violate Federal tax law because vessel owners are assumed to be "employers" and deckhands "employees."

*Response:* No such assumption is made. Vessel owners and lease holders are eligible for an initial allocation of QS and crew members are not eligible primarily because vessel owners and lease holders generally have a greater investment in the fisheries than do the crew members. The commenter does not specify how this allocation violates tax laws. NOAA finds no violation of U.S. tax laws on this point.

*Comment 16:* The IFQ system would be extremely detrimental to Alaskans residing in coastal communities. The halibut fishery is characterized by a large diversified fleet of relatively small vessels that are based in, and deliver their catch to, numerous ports within Alaska. Alaskan coastal communities

are economically dependent on this large fleet of small family-owned fishing vessels. The IFQ program would destroy the small-scale family fishing business in Alaska the same way big agribusiness is forcing the small family farms out of business. It would undermine the economic base of most of Alaskan coastal communities, deny access to citizens who live closest to the fishery resources, and put thousands of fishermen and shore plant workers along the Alaskan (Gulf) coast out of work. Seldovia will be finished as a fishing port if halibut and sablefish can't be landed there. Many years ago, the fleet was smaller and comprised of larger vessels based predominantly in the State of Washington. The IFQ plan is an attempt to tear the social fabric of Alaskan coastal communities and make the present culture fit the memories of the former fleet owners. Potential impacts of the IFQ plan on Alaska coastal communities involved in these fisheries dictate a need to do additional detailed studies before the plan goes into effect.

*Response:* The IFQ program is intended to achieve OY by resolving 10 conservation and management problems identified by the Council in 1989. Although the program will limit access to these fisheries, the Council incorporated measures to prevent undue disruption of the economic and social structure of Alaskan coastal communities. Landings of halibut and sablefish under the IFQ program can be made at any port. There is no requirement (except in § 676.14(e) pertaining to transshipment of processed IFQ fish) that prevents landing these species at Seldovia or any other port in or outside of Alaska. The potential effects of the IFQ program and alternatives were studied and taken into consideration by the Council and the Secretary. Social and cultural aspects of the halibut and sablefish fixed gear fisheries are considered and described in several sections of the FEIS. Most notably, the analysis of July 19, 1991, focused on the halibut fishery. Section 5.0 of that document was prepared by a social anthropologist and contained a detailed description of the social environment of the halibut fishery including present participation from coastal areas, historical fishing practices and dependence on the fishery by coastal communities, and details of native and subsistence fisheries. Specific demographic profiles of affected coastal communities are provided which address the relative economic importance of the halibut fishery to each community and the size,

composition, and stability of the resident work force relative to the fishery. The section concludes with an assessment that social and cultural benefits could be maximized under an IFQ program. Another one of the component analyses of the FEIS, dated March 27, 1992, also contains a section (3.0) devoted to assessment of potential coastal community impacts. This section describes the distribution of historical landings of halibut and sablefish relative to the distribution of harvesting privileges resulting from the IFQ program and the importance of these landings to each community relative to other species. This section also assesses the potential for QS to be transferred away from coastal communities. The assessment concludes that some net transfer of QS is likely to occur, but that overall, the IFQ program is expected to provide net benefits to rural coastal communities, Alaska, and the Nation (FEIS sec. 3.4). At the request of the Governor of Alaska, the Alaska Commercial Fisheries Entry Commission conducted an independent review of the IFQ program. That review concluded that fears of social disruption under the IFQ program are unfounded, and that rural coastal communities in Alaska are likely to realize benefits from the program. Additional social and economic analysis are not likely to substantially add to the understanding of the effects of this IFQ program on Alaska coastal communities. However, NOAA favors continued monitoring and analysis of the effects of the IFQ program during its implementation. Unanticipated injurious effects may be addressed by amending the IFQ program if necessary.

*Comment 17:* The IFQ program would give a disproportionate share of the resource to "non-Alaskan" fishermen precluding participation by the growing Alaska longline fleet. This will deny residents of Alaska communities the opportunity to fully diversify and develop their fisheries, creating financial hardship and adverse economic impacts.

*Response:* The IFQ program will distribute harvesting privileges among fishermen (vessel owners/lease holders) in proportion to their history of landings during the base period (1984-1990 for halibut and 1985-1990 for sablefish). In some areas, the amount of QS initially allocated to residents of Alaska will be larger than those to residents of other states, and in other areas the reverse will be true. Tables 1-4 in Appendix D to the FEIS dated September 15, 1992, quantitatively indicate the amounts of these proportions. For example, about 42 percent of the QS allocations for

sablefish in the Aleutian Islands subarea will go to residents of Alaska while 58 percent will go to residents of other states (Table 2). On the other hand, about 88 percent of the QS allocations for halibut in area 2C will go to Alaska residents, and only 12 percent will go to residents of other states (Table 1). This allocation reflects present participation in, and dependence on, the halibut and sablefish fisheries by species and area. Under this allocation scheme, residents from all states have an equal opportunity to diversify and develop their fisheries for halibut and sablefish.

*Comment 18:* The IFQ program could provide for more development of offshore processors which will reduce the raw fish tax revenues to Alaskan communities.

*Response:* Significant growth in offshore processing of halibut and sablefish is unlikely because catcher vessel QS cannot be transferred to freezer vessels. If any catcher vessel QS are used on a freezer vessel during a fishing trip, then all fish onboard during that trip must be unprocessed (§ 676.22(i)(3)). Conversely, Alaska raw fish tax revenue may increase under the IFQ program if the landed value of halibut and sablefish increases as expected.

*Comment 19:* Alaskan native people have not been able to fully develop their fisheries. Therefore, the Seldovia Village Tribe should be able to participate in the CDQ program. There is no reason for the CDQ program to be limited to western Alaska and prohibit natives along the central gulf coast from participating.

*Response:* The CDQ program is limited to western Alaska communities because the Council concluded that commercial marine fisheries could be developed in this area to the economic benefit of the participating communities and that commercial fisheries in these communities were undeveloped relative to other coastal communities in the State. A native organization in other parts of the State could acquire QS for use by its members. Catcher vessel QS used in this manner would have to be transferred to individuals. Current QS use limitations at § 676.22 (e) and (f), and the QS holder-on-board requirement at § 676.22 (c) and (i) would limit the manner in which QS held by native organizations is used. Nevertheless, the IFQ program could be used to facilitate development of Alaska native fisheries outside of the CDQ program.

*Comment 20:* The IFQ plan would deny the Huna Tlingit people of southeast Alaska the right to make a living by fishing as they have done for

many generations and will force more of them on welfare. These native Alaskans will not be able to compete with better financed fishermen for the purchase of QS.

*Response:* The IFQ program will not deny any native group participation and could be used to help develop native fisheries (see response to comment 19).

*Comment 21:* The IFQ proposal effectively locks out women and minorities from participation in the IFQ fisheries and locks in the white male club of vessel owners by effectively giving them ownership of the resource. The price of buying IFQs will be prohibitive for minority deckhands who have recently entered these fisheries although they are granted free to vessel owners. Therefore, the IFQ plan would violate the Alaska State Constitution, the U.S. Constitution, and the Magnuson Act.

*Response:* NOAA finds no violation of the Magnuson Act, the Halibut Act, or other applicable law, including any state constitution or the U.S. Constitution. There is no evidence in the record of discrimination against women or minorities. Although the cost of entering the IFQ fisheries by buying QS will be higher under the program than under open access management, the analysis demonstrates that implementation of the IFQ program will result in a net benefit to the United States. However, crew members may continue to work as crew members under the IFQ program with no obligation to purchase any QS.

*Comment 22:* The Council did not consider alternative management methods or alternative limited access methods other than IFQ variations after the 1989 draft SEIS for sablefish. Changed conditions in the fishery and socio-cultural environment require a new EIS before such a major Federal action could take place.

*Response:* The November 1989 analysis considered four alternatives for the fixed gear sablefish fishery: (1) Continued open access; (2) license limitation; (3) IFQ; and (4) annual fishing allotments. Based on this analysis, the Council determined that license limitation and annual fishing allotments were not reasonable alternatives for addressing the 10 problems identified by the Council. The Council then proceeded with a more in-depth analysis of various IFQ options as compared with the open access or status quo alternative. The same conservation and management problems identified in the sablefish fishery also are experienced in the halibut fishery. The Council decided to consider only IFQ alternatives as compared with the status

quo for the halibut fishery because it already had determined that license limitation and annual fishing allotments would not be feasible. In addition to the November 1989 analysis, FEIS component analyses in July 1991 and March 1992 included detailed descriptions of the social, cultural, and economic conditions of the fisheries. These conditions have not changed substantially since 1992.

*Comment 23:* Traditional management proposals have not been sufficiently considered as alternatives to the IFQ plan. There are simpler solutions to management problems in the halibut fishery (e.g., area registration, gear restrictions, quotas based on boat size, trip limits) that will allow everyone to participate in the fisheries. Other options for spreading out the fleet, such as trip limits, gear restrictions, and fleet platooning, should be considered first.

*Response:* The Council considered such traditional open-access management measures as alternatives to the IFQ program, but concluded that these measures did not offer long-term solutions to the conservation and management problems confronting these fisheries. For example, none of the measures cited by the commenter would resolve the fundamental problem of excessive fishing capacity in the halibut and sablefish fisheries.

*Comment 24:* Fishermen need to diversify their fishing practices to survive the current depressed market prices for salmon. The IFQ program will prevent diversification.

*Response:* NOAA understands that recent low market prices for salmon have been hurting the salmon fishery in Alaska. The solution to this problem may be in creating more market alternatives for salmon products rather than providing opportunity for salmon fishermen to enter already overcapitalized fisheries. Nevertheless, diversification into several different fisheries likely will remain as a common practice. The IFQ program does not prevent diversification. Fixed gear fishermen who have IFQ will be able to realize benefits from being able to land their incidental catches of halibut or sablefish instead of discarding these species. However, those fixed gear fishermen who do not have IFQ will not be allowed to harvest halibut and sablefish.

*Comment 25:* In its analysis, the Council makes few positive assertions in support of anticipated benefits; numerous caveats lead one to question whether there will be any real net benefits.

*Response:* No analysis is able to forecast future events with absolute

certainty. The FEIS does not attempt to make such a forecast, but instead documents that certain potential effects may occur if the assumptions used in the analysis are correct.

Analysts typically caution the reader about the results and conclusions because the assumptions eventually may not be correct. This inability to have perfect knowledge of the future does not make the analysis invalid.

*Comment 26:* The IFQ program violates the Magnuson Act because it fails to achieve OY.

*Response:* As discussed above, the OY from the fixed gear fisheries for sablefish and halibut is achieved through the reduction of bycatch and discard waste of fish, increased prevention of overfishing, and enhanced economic and social benefits to the Nation (FEIS sec. 6.0). Despite the fact that the IFQ program does not change the specified amount of fish that may be harvested each year, benefits to the Nation from harvesting that amount of fish are increased.

*Comment 27:* Procedural errors were made that confused and shortened the public comment period. Notice of availability of the supplemental EIS for comment at the Council level incorrectly advised the public that the time for addressing comments to the Council had expired before the documents were officially released. Further, Magnuson Act procedure was violated by not providing a full 45 days for public comment from the date of publication of the proposed rule notice. The Secretary did not make the plan amendments available to the public on the receipt date; Council staff did not release them until November 18, 1992. Allowing 60 days for public comment should have resulted in a comment deadline of January 18, 1993, not January 11, 1993. Generally, notices and deadlines for public comment and public testimony opportunities occurred during openings for the sablefish and halibut fisheries which prevented many people who would be affected by the proposal from fully participating in the policy-making process.

*Response:* Three different documents were available for public comments at different times during the development and Secretarial review of the IFQ program. These include the draft and final EIS, the FMP amendment text, and the proposed implementing rules. NOAA finds no errors with respect to providing sufficient opportunity for public comment on any of these documents (see response to comment 43).

*Comment 28:* National standard 4 of the Magnuson Act and the substantially

similar provisions of the Halibut Act are violated because the IFQ program is not reasonably calculated to promote conservation. As a biological conservation measure, quota share programs have proven ineffective and, in some cases, counterproductive. There will be increased pressure on managers to keep total catch limits high so that persons vested with harvesting rights will be able to pay off the debt of acquiring QS. Less efficient fishermen who retire from the halibut and sablefish fisheries will increase pressure on other fish stocks still under open access management. The potential biological harm from temporarily suspending halibut prohibited species catch (PSC) limits, under reporting, discards, and highgrading are not fully assessed and could negate any conservation benefits.

*Response:* The promotion of biological conservation under the IFQ program should be considered in comparison with biological conservation under current open access management. Under the current regime, fishermen are inspired to maximize their harvest of halibut or sablefish as fast as possible before fishery managers close the open fishing season. Large amounts of fish may be killed but not harvested in this race due to lost or excessive amounts of fishing gear that is set but not retrieved. More halibut and sablefish are wasted when they are caught incidental to the harvest of other species but must be discarded because the season for halibut and sablefish is closed. In addition, harvested halibut must occasionally be returned to the sea because they have been mishandled and are rejected by processors as inferior product. These sources of fishing mortality are often not quantified or counted toward the overall catch quota but may have a negative effect on stocks.

The IFQ program will significantly reduce these sources of fishing mortality because fishing will be conducted over a longer period with less waste. Fishermen will have no incentive to set more gear than they can retrieve, and fewer gear conflicts will result in less lost fishing gear. Halibut and sablefish caught incidental to the harvest of other species may be landed on unused IFQ. Discarded bycatch of IFQ species caught with fixed gear will be minimized because of the economic incentive to acquire IFQ at least sufficient to cover its retention and landing. Fishermen seeking the highest value for their product will take more time to properly clean and store fish on ice or process it immediately.

The potential for underreporting of IFQ harvests and highgrading are often

cited as biologically detrimental aspects of IFQ-style management programs. Underreporting and highgrading are discussed in detail in the FEIS at Appendix E (pp. 2-7). NOAA recognizes that underreporting will not be completely prevented, but a planned increased enforcement and monitoring effort coupled with severe penalties for gross underreporting is likely to minimize this potential source of biological damage to the stocks. Highgrading, the substitution of large high-valued fish for harvested small low-valued fish, is not expected to be a major threat because of increased enforcement and because a relatively small market price difference between small and large fish will reduce the profitability of highgrading and, therefore, the incentive to discard harvested fish. Generally, NOAA expects substantially less unreported fishing mortality under the IFQ program than under open access management.

*Comment 29:* The vast majority of technical comments and public opinions expressed to the Council were ignored by the Council. Something is wrong (with the IFQ program) when 75 to 85 percent of all responses are opposed to it. The IFQ program will not result in a better managed fishery and safer fishing conditions. It is advocated by a group of greedy individuals so that they can control a fishery that belongs to all the people. There have always been too many fishermen chasing too few fish. Sometimes this results in hurting the resource, but this is not the case with halibut which has been well managed.

*Response:* Over the 3 years that the Council had the IFQ program under consideration, it received thousands of oral and written comments that expressed support or opposition. The Secretary also received many pro and con comments on the IFQ issue before and during the Secretarial review period. The Council also received reports and advice from its industry advisory panel and scientific and statistical committee, and reviewed analyses and staff reports on the potential effects of the IFQ program as compared with the open access and other alternatives. After considering all of these comments, reports, recommendations, and analyses, the Council concluded that the IFQ program would result in better management of the fisheries and benefits to the Nation. The Secretary, after reviewing the record of comments, reports and analyses, agreed with the Council and approved the Council's IFQ recommendation.

*Comment 30:* Reducing the number of vessels in the fishery will not necessarily increase the length of fishing seasons since 20 percent of the vessels take 85 percent of the fish. If the bottom 80 percent of the fleet leaves the fishery there would be only a minimal increase in the length of openings.

*Response:* The IFQ program allows an IFQ permit holder to harvest halibut and sablefish at any time during the season prescribed at § 676.23. This is true regardless of the number of vessels in the fleet. No specific fleet size or reduction goal is established by the IFQ program. Instead, fishermen who have QS will harvest IFQ fish with fixed gear at various times of the year based on their assessment of the market for those species and other factors.

*Comment 31:* Four different sets of public comments (3 to the Council and 1 to the Governor of Alaska) indicate strong opposition to the IFQ plan from Alaskan residents and support from non-Alaska residents. Opposition comments from Alaskan addresses ranged between 59 percent and 98 percent of all comments received while supportive comments from non-Alaskan addresses ranged between 70 percent and 96 percent. This suggests that the plan discriminates between residents of different states in violation of national standard 4.

*Response:* These statistics do not indicate discrimination prohibited by national standard 4. State of residence is not a factor for the allocation of QS. Similarly situated residents of all states are treated equally under the IFQ program.

*Comment 32:* The proposed rule would exceed the permitting authority allowed by the Magnuson Act. The proposed rule provides for IFQ permits to be issued to persons, but the Magnuson Act allows permitting only of vessels or the operators of vessels. "Persons" are not vessels and they are not required to be operators of vessels.

*Response:* The Magnuson Act, at section 303(b)(10), provides authority to prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery. NOAA has determined that IFQ permits may be issued to owners of vessels as opposed to operators of vessels.

*Comment 33:* The proposed rule would violate the U.S. Constitution at Article I, section 9, paragraph 6 because it would require vessels bound for another state to enter and clear at one of several ports in Alaska.

*Response:* This clause of the U.S. Constitution is as follows:

No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

NOAA has modified the regulation by including the port of Bellingham, Washington, as a designated port. Thus, vessels bound for Washington are not "obliged to enter, clear, or pay duties in another state." Vessels bound for states other than Alaska or Washington should contact the NOAA Office of Enforcement to make other arrangements (see response to comment 49).

*Comment 34:* Transfers of QS by inheritance are of limited use if the person who inherits it does not also receive IFQ based on the QS, according to §§ 676.21 and 676.22. This is tantamount to inheriting a home and being prevented from using it to live in, to rent, or for other purpose except to sell it to a restricted class of persons. This would be an unfair restriction on the use of personal property.

*Response:* All transfers of QS must be approved by the Regional Director according to the procedure prescribed at § 676.21(e) before they can be used to harvest IFQ fish. This provision is necessary to assure that QS use limitations and other requirements of the Council's IFQ policy are not violated. The regulations do not prevent the transfer of QS by operation of law, but the use of such QS through the annual allocation of IFQ must be consistent with the regulatory requirements to achieve the conservation and management objectives of the IFQ program. The personal property nature of QS and IFQ is addressed in the response to comment 91.

*Comment 35:* The IFQ plan will add costs to the halibut fishery that will hurt the international competitiveness of American-caught fish.

*Response:* The IFQ program will likely add value to halibut products because catching and processing will proceed at a more deliberate pace than under the current 1-day seasons. In addition, a longer season for halibut under the IFQ program will enable the marketing of higher valued fresh fish over a longer, more predictable period of the year. These features should enhance the competitiveness of halibut harvested in and off of Alaska in domestic and international markets (FEIS sec. 2.2.2).

*Comment 36:* The conflict of interest by several Council members who voted

on the IFQ issue questions the legal authority of the Council. The composition of the Council is not fair and balanced as required by the Magnuson Act.

*Response:* The Council is legally constituted under the Magnuson Act. Section 302(b) of the Magnuson Act authorizes the appointment of voting members who are knowledgeable of the fisheries of concern to the Council by virtue of their occupation, training, or expertise.

*Comment 37:* NMFS does not have adequate funding to enforce the IFQ plan. The cost of providing minimum enforcement of the program will be significantly more than the present cost of enforcing traditional management measures for the halibut and sablefish fisheries. The Council did not make an informed decision regarding the enforcement costs of the IFQ program because neither the Council nor the public had an adequate analysis of enforcement costs.

*Response:* NOAA estimates that administrative and enforcement costs will be increased by about \$2.7 million annually, and there will be an additional 1-time implementation cost of about \$1.9 million (FEIS sec. 6.1). The Council was aware of these approximate costs when it decided to recommend the IFQ program to the Secretary. An implementation plan was prepared by NMFS, in consultation with an interagency and industry work group, for presentation to the Council at its December 1991 meeting prior to the Council decision on IFQ management. The implementation plan is section 5.0 of the FEIS. Monitoring and enforcement issues are discussed in that plan, and costs are estimated. This was the best information available to NMFS and the Council on implementation costs at that time. In approving the IFQ program, the Secretary accepted the responsibility to carry it out.

*Comment 38:* Analysis of the overall administration of the IFQ program was inadequate. NOAA did not develop an adequate explanation of the appeals process, application and initial allocation process, or the general complexity and cost of the bureaucracy needed to administer the IFQ program. The Council did not have an adequate analysis of the administrative and enforcement costs or of comparable implementation costs of alternatives to the IFQ program.

*Response:* A group of state and Federal fishery managers, enforcement personnel, and representatives of the fixed gear fishing industry met several times during the period September–November 1991, to discuss the details of

IFQ implementation, if it were approved by the Council and Secretary. An implementation plan, drafted by NMFS, was the product of that group. The implementation plan was presented to the Council at its December 1991 meeting prior to the Council's decision to recommend the IFQ program to the Secretary. The group also made recommendations to the Council on ways to make the IFQ program more practicable. The implementation plan is contained in section 5.0 of the FEIS. Such plans are not required under the Magnuson Act or any other law, and are not usually submitted with FMP amendment documents for Secretarial review. However, the implementation plan was helpful to the Council and the Secretary in indicating the potential administrative complexity and cost of the IFQ program before they took final action. To this extent, NOAA finds that the implementation plan is an adequate description of the overall administrative process. The appeals process is discussed in the plan (FEIS sec. 5.2.5). Regulations implementing the appeals procedure will be the subject of a future rulemaking notice. However, paragraph (e) of § 676.20 provides guidance for appeal of initial allocations and is changed from the proposed rule in that there will be no resubmitted applications.

*Comment 39:* NOAA did not provide the Council or the public with relevant information regarding the effectiveness of administration and enforcement of the surf clam/ocean quahog ITQ program. A memorandum on this subject was produced in February 1992 which would have been useful to the Council staff in the preparation of its analysis dated March 27, 1992, and to the public in commenting to the Council prior to its reconsideration of the IFQ program in April 1992.

*Response:* The surf clam/ocean quahog ITQ program review performed by the Northeast Region, NMFS, early in 1992 was of little relevance to the halibut and sablefish IFQ program. The two programs are significantly different in design and administration. These differences stem from major differences between the respective fisheries. A comparative analysis is outside the scope of this response; however, interested persons are referred to proposed and final rule notices published respectively on February 1, 1990; 45 FR 53342, and June 14, 1990, at 55 FR 24184.

*Comment 40:* The Council is not clear about its goals for the IFQ program. Apparently, the Council is not totally satisfied with the potential socio-economic impacts of the program



because it began work on amending the program before the program completed Secretarial review.

*Response:* The Council's objectives are clearly specified in the November 1989 analysis. In that document, and in subsequent documents (most recently at FEIS sec. 2.1), the Council identifies 10 conservation and management problems in the fixed gear fisheries for halibut and sablefish. NOAA expects any complex fishery management program to undergo periodic review and change as experience with the IFQ program suggests refinements. The fact that such refinements were not known at the beginning of the planning process does not indicate confusion regarding goals and objectives.

*Comment 41:* The Council failed to provide the public with an adequate and complete analysis of the benefits and costs of the IFQ program and of its potential social impacts. A social impact assessment would have demonstrated significant negative social impacts on Alaskan coastal communities from the IFQ program.

*Response:* The FEIS analyses prepared by the Council fully assess the potential benefits and costs of the IFQ program and its potential social impacts. A summary of the potential benefits and costs is in FEIS section 6.0, which estimates quantified annual benefits to be in the range of \$30.1 million to \$67.6 million. Quantified annual costs for administration are estimated to be about \$2.7 million. This results in a conservative benefit-cost ratio of about 10 to 1. Non-quantified benefits and costs also are discussed. NOAA finds that the analysis of benefits and costs in the FEIS is adequate. Significant negative social impacts on Alaskan coastal communities are doubtful (see responses to comments 5, 16, and 17).

*Comment 42:* The Assistant Administrator for Fisheries, NOAA, is incorrect in his initial determination that the IFQ proposal is not a major rule under Executive Order 12291. The total estimated annual benefits (sic) are in excess of \$100 million, and a regulatory impact analysis should be prepared.

*Response:* Executive Order 12291 requires the preparation of a regulatory impact analysis for "major rules." Among the criteria for determining whether a rule is a "major rule" is its likelihood of resulting in an annual effect on the economy of \$100 million or more. An RIR was done as part of the FEIS and it is summarized in section 6.0 of the FEIS. The RIR concludes that the IFQ program would have an effect on costs, prices, competition, employment, investment, and productivity, but that it is anticipated that these effects

combined would not amount to \$100 million or more annually. The RIR estimates that quantifiable annual benefits would be in the range of \$30.1 million to \$67.6 million. Annual administrative and enforcement costs are estimated to be about \$2.7 million with an additional one-time implementation cost of about \$1.9 million. Therefore, NOAA determined that this is not a "major rule."

*Comment 43:* The public comment period should be extended to allow for adequate public review.

*Response:* As described in the preamble to the proposed rule, the Council has discussed limited entry options for various fisheries since the late 1970s and, for the sablefish fishery in particular, since 1985. Through April 1992, the issue of limited entry for the sablefish or halibut fisheries has been on the Council agenda for 27 meetings, and every meeting of 1988 through April 1992. All Council and committee meetings at which this subject was discussed were publicized, open to the public, and most provided opportunity for public comment. In addition, the Council chose to follow a full EIS-procedure under the National Environmental Policy Act (NEPA) for this issue, in part to enhance opportunity for public participation. This procedure provided for public scoping meetings and comment periods on several draft analyses and the FEIS.

After receipt of the proposed IFQ program by the Secretary, a notice of availability was published on November 3, 1992 (57 FR 49676), and the proposed implementing rule was published on December 3, 1992 (57 FR 57130; corrected at 57 FR 61870, December 29, 1992). The comment period ended on January 11, 1993, which provided sufficient time for public review and comment. NOAA concludes that the opportunity for public review and participation in the IFQ decision-making process was adequate in light of extensive public discussion of this issue at Council meetings and compliance with requirements of the Magnuson Act and other applicable laws (see response to comment 27).

*Comment 44:* The proposed IFQ plan is not consistent with several sections of the Magnuson Act. Specifically, the plan violates several national standards (section 301), it does not include an adequate fishery impact statement in violation of section 303(a)(9), and it does not properly address the provisions of section 303(b)(6).

*Response:* Section 7.0 of the FEIS provides a summary of consistency with the Magnuson Act and other applicable laws. Consistency with each national

standard is addressed in this section and above in this rule. Magnuson Act section 303(b)(6) requirements are addressed in section 7.1.2 of the FEIS and above in this rule. The primary focus of the analysis in the FEIS is the potential effect of the IFQ program (and alternatives) on participants in the halibut and sablefish fisheries in compliance with the fishery impact statement requirement of the Magnuson Act at section 303(a)(9). Section 4.0 of the FEIS assesses the possible effects on non-IFQ fisheries, recreational fisheries, and fisheries in areas managed by adjacent Regional Councils. After reviewing these documents, NOAA determined that the IFQ program complies with the Magnuson Act and other applicable laws.

*Comment 45:* The proposed rule at § 676.16(h) (formerly § 676.16(g)) would prohibit the discard of Pacific cod and rockfish taken by vessels in the IFQ program. This requirement could cause a biological conservation problem because the bycatch allowances for rockfish are not high enough to prevent area quotas for some species of rockfish to be exceeded. The regulations should be changed to require the retention of only the natural or background bycatch of rockfish. Also, an overage provision for rockfish, similar to that for IFQ halibut, may be needed to avoid mandated waste.

*Response:* The prohibition on discarding Pacific cod or rockfish that are taken incidental to the harvest of IFQ halibut or sablefish applies only if Pacific cod or rockfish are not otherwise required to be discarded by other State and Federal regulations or inseason orders (see response to comment 78(a)).

*Comment 46:* The proposed rule at § 676.17(b) would establish a system that makes IFQ holders accountable for small overages of IFQ. It is not clear, however, who would be accountable for overages of leased IFQ. Would the holder of QS on which the IFQ is based be penalized or the person who leased the IFQ?

*Response:* The Regional Director would deduct an amount equal to the overage from IFQ allocated in the year following determination of the overage. This overage adjustment will apply to any person to whom the affected IFQ is allocated in the year the adjustment is made. For example, fisherman A transfers sablefish IFQ to fishermen B in 1995 through an approved lease of QS. Fisherman B lands sablefish that year that exceeds the leased amount by 3 percent. If this fact is determined by the Regional Director in 1996, then the IFQ allocated to fisherman A in 1997 will be reduced by 3 percent, assuming he

made no other transfers of QS. If fisherman A sold all of his QS to fisherman C in 1996, then fisherman C would realize the reduced IFQ in 1997.

*Comment 47:* The halibut QS use limit and vessel limit in regulatory area 2C should be the same one-half percent of the total halibut QS for that area. The proposed rule (at § 676.22(f)(1)) would establish the personal use limit at one percent and the vessel limit at one-half percent (§ 676.22 (h)(1)).

*Response:* NOAA agrees that the halibut QS use limit in area 2C by a person and the vessel harvest limit should be consistent. A 1 percent harvest limit per vessel in area 2C also is consistent with the text of the Council's IFQ motion, which indicates that the one-half percent limit expressed in the proposed rule was in error. Therefore, in § 676.22(h)(1), the harvest limit of IFQ halibut applicable to vessels in area 2C is changed from 0.5 to 1 percent of the total halibut catch limit for that area.

In addition, to further clarify the restrictions under paragraph (h), language has been added to paragraph (h)(3) stating that two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

*Comment 48:* An exception to the requirement for catcher vessel QS holders to be onboard the vessel during fishing operations is provided at § 676.22(i)(1) to individuals who receive an initial allocation of catcher vessel QS. This contradicts the Council's stated goal of maintaining the current owner-operator character of the halibut and sablefish fleets. Although this exception does not apply to the eastern GOA, in other areas it would allow initial QS recipients to hire skippers and function as absentee-owners. This is not consistent with the Council's policy.

*Response:* The Council's basic policy is to require catcher vessel QS holders to be onboard during fishing operations and sign required landing reports. The Council provided for an exception to this policy in its motion language and FMP amendment text for persons who receive initial catcher vessel QS for use outside the two areas described in the responses to comments 60 and 68. As defined, "persons" includes individuals, corporations, partnerships, and other entities. Therefore, the exception, as it applies to individuals, is at § 676.22(i)(1), and at § 676.22(j)(1) as it applies to corporations and partnerships. This policy responds to public concern about substantial change in the current owner-operator character of the fixed gear fishery and the fear that large firms that use hired skippers may acquire catcher vessel QS. However,

many individual fishermen operate their vessels as corporations or partnerships for financial, liability, and taxation reasons. The exception is intended to prevent severe disruption of current fishing practices. The Council was aware that such an exception deviated from its basic policy by allowing hired masters to operate vessels that use catcher vessel QS. It is not expected to allow for unintended changes in the character of the fleet because the exception is not transferrable, and it expires when corporations or partnerships undergo a "change." The term "change" is defined at § 676.22(j)(2). Eventually, as the individuals and firms that received initial allocations are replaced by new ones, all catcher vessel QS will be transferred to individuals in keeping with the Council's basic policy.

*Comment 49:* The list of primary ports in § 676.17(a)(4) should be expanded to include the Washington ports of Bellingham and Seattle. A large segment of the halibut fleet is based in the State of Washington and has a long history of delivering products to these ports.

*Response:* NOAA agrees. Bellingham, Washington, has been designated a primary port. Vessels bound for Washington or other States must submit a check-out report to NMFS before departing waters in or adjacent to the State of Alaska. The check-out report must include the estimated weight of IFQ sablefish and IFQ halibut onboard, and the expected date and time that the vessel will be presented to NMFS enforcement officers or enforcement aides in Bellingham for clearance. Bellingham is selected because of its high volume of halibut landings and its proximity to the U.S./Canada border.

*Comment 50:* Would a catcher-processor be allowed to process at sea halibut or sablefish that are harvested under the vessel's IFQ or purchased from other catcher vessels?

*Response:* A vessel that is used to process some or all of its catch during any fishing trip is defined as a "freezer vessel" in § 676.11. A catcher-processor would be allowed to process at sea IFQ halibut or IFQ sablefish providing the vessel harvested these fish against QS assigned to vessel category "A" (the freezer vessel category). Although IFQ halibut could be processed by freezing and removing the head, it could not be otherwise disfigured in a manner that prevents determination of the minimum size (see § 301.12).

The transfer of any IFQ species from the vessel that harvested such fish is defined as an "IFQ landing." A landing of IFQ species to any vessel would require that the receiving vessel have a

permitted registered buyer onboard and be capable of transmitting the IFQ landing report required at § 676.14(b). A minimum of 6 hours prior notice must be given by the operator of the vessel making an IFQ landing (see § 676.14(a)). In addition, the vessel making the landing may be required to obtain a clearance at a primary port listed in § 676.17(a) prior to landing, depending on the location of the vessel to which IFQ species will be landed. Hence, if a catcher vessel making an IFQ landing and a catcher-processor which received the landing comply with these and other applicable laws, then the catcher-processor would be allowed to process the landed IFQ species.

*Comment 51:* The application for an initial allocation of QS should be announced in industry publications in addition to the Federal Register. Federal Register publications are the most cumbersome and confusing forms of communication on earth. In addition, a 180-day application period may not be long enough if it coincides with the primary fishing period of April through September.

*Response:* Although official notice of the QS application period will be given in the Federal Register, NOAA will alert the fishing industry through more widely read publications and news announcements. In addition, NOAA will schedule the application period, at least in part, during fall or winter months when most of the fixed gear fishing fleet is not active.

*Comment 52:* Restrictions on leasing QS at § 676.21(d) are necessary to prevent absentee QS holders, to keep QS in the hands of active fishermen, and to prevent a stagnant market for QS that could result in prohibitively high costs for entry. For these reasons, there should be no provision (§ 676.21(f)) to allow leasing 10 percent of a QS.

*Response:* The Council heard the arguments for and against leasing QS. The Council decided to recommend no restriction on leasing freezer vessel QS but to prohibit leasing of catcher vessel QS except during a 3-year trial period when up to 10 percent of a person's catcher vessel QS may be leased. The limited leasing of catcher vessel QS was intended by the Council to allow fishermen more flexibility in planning their fishing operations and was not expected to result in abandonment of the fishery to absentee QS holders. In its review of the Council recommendations on leasing QS, NOAA found no inconsistency with the Magnuson Act, Halibut Act, or other applicable laws.

*Comment 53:* Requiring catcher vessel QS holders to be onboard is an important provision necessary to ensure

that QS stay in the hands of active fishermen. Temporary exceptions to this rule for extreme personal injury should be stringent to prevent QS holders using this provision to get around the leasing prohibition.

*Response:* Emergency waiver of requirements for an individual IFQ card holder to be onboard during fishing operations and sign the IFQ landing report is provided at § 676.22(d). These requirements may be waived only for the IFQ halibut and IFQ sablefish retained on the fishing trip during which an extreme personal emergency occurred that prevented the IFQ card holder from complying with § 676.22(c). Use of IFQ held by an injured or deceased IFQ permit/card holder on subsequent fishing trips would require transfer approval as prescribed at § 676.21(e).

*Comment 54:* What happens to a person's QS when they die? Can it be leased while their estate is being resolved or temporarily used by an heir? At what age may a person take on the responsibility of owning QS?

*Response:* When a QS holder dies, that person's QS would be transferred by the laws of succession. Notification of such transfers by operation of law would have to be sent to the Regional Director as prescribed at § 676.21. After determining that a person is the lawful holder of QS received by operation of law, that person may subsequently seek approval to use, lease, sell, or otherwise transfer QS within the limitations of the regulations. There is no provision for temporarily using QS before use, lease, or other subsequent transfer of the QS that was transferred by operation of law has been formally approved by the Regional Director. No age criteria are prescribed for receiving or using QS. Anyone capable of satisfying the QS-holder-on-board requirements for catcher vessel QS at § 676.22 (c) and (i) could use such QS.

*Comment 55:* The cost of the CDQ program to QS holders would be substantial because they would receive less QS than they otherwise would without the CDQ program. Any additional costs incurred to implement and administer the CDQ program should be borne only by the CDQ recipients.

*Response:* The Magnuson Act does not authorize charging CDQ program implementation costs to CDQ recipients.

*Comment 56:* The wording at § 676.20(a)(1)(iii) is vague regarding evidence of a verbal vessel lease which is common practice in the catcher vessel fleet. One recommended form of documenting such vessel leases is to determine who paid the crew members and, therefore, was responsible for

issuing them their Federal income tax form 1099.

*Response:* NOAA agrees that language in the proposed paragraph regarding Federal income tax documents is vague, but limiting acceptable documentation to a specific tax form, such as Form 1099, does not improve the paragraph. Therefore, Federal income tax documents are deleted from § 676.20(a)(1)(iii) as acceptable evidence of a vessel lease, for purposes of initial allocation to vessel lease holders. This language was included in the proposed rule in response to fishing industry concerns about documenting the existence of a vessel lease. Some fishermen argued that vessel lease holders would be responsible for mailing IRS Form 1099 to the crew and that this would demonstrate the fact that persons issuing such forms were lease holders. This is a vague standard because persons hired by a vessel owner may submit this form to the IRS on behalf of the vessel owner. The final rule deletes this evidence of a vessel lease. The option of an after-the-fact statement from the vessel owner and lease holder attesting to the existence of a lease remains for persons who did not have a written vessel lease agreement. Agreement should be reached between former vessel owners and lease holders to draft and sign such statements when there was no previous written lease.

*Comment 57:* The definition of "freezer vessel" should be based on the performance of a vessel during any fishing trip. This would allow freezer vessels to use catcher vessel QS for sablefish when they are not operating as freezer vessels.

*Response:* In § 676.11, "freezer vessel" is defined as any vessel that is used to process some or all of its catch during any fishing trip. Fishing "trip" also is defined in § 676.11. Hence, operating as a freezer vessel depends on how the vessel handles its catch during a fishing trip. Note, however, that a freezer vessel that operates as a catcher vessel during a trip for purposes of using sablefish catcher vessel QS, is still a "processor vessel" under §§ 672.2 and 675.2 because this definition depends on the capability of a vessel to process groundfish regardless of whether it actually processes fish on any fishing trip (see also change 2 under "Changes from the Proposed Rule in the Final Rule" above).

*Comment 58:* The Council did not intend to allow catcher vessel IFQ for halibut to be used on freezer vessels. The provision at § 676.22(i)(3) to allow catcher vessel IFQ to be used on freezer vessels was intended to apply only to sablefish. A new prohibition should be

added at § 676.16 to say it is unlawful to use halibut catcher vessel shares on a vessel which has, or will, during the current year of participation, operate as a freezer vessel.

*Response:* NOAA agrees that the IFQ motion approved by the Council specifically states that sablefish catcher vessel QS may be used on a freezer vessel providing no frozen product of any other species is onboard at the same time. The regulation at § 676.22(i)(3) more broadly allows for halibut catcher vessel QS to be used on a freezer vessel in the same manner. This allows for a bycatch of halibut on such vessels to be retained and landed in compliance with the requirement to land all fish unprocessed. The broader application of this regulation could reduce discard waste of halibut. This interpretation of the Council's motion does not require vessels operating as freezer vessels to land halibut if they have catcher vessel halibut IFQ onboard. NOAA understands that the Council did not want to require vessels operating as freezer vessels to have IFQ for all of their halibut bycatch because this would create an economic incentive for freezer vessel owners to acquire catcher vessel QS. This is why the discard prohibition at § 676.16(l) is specific to catcher vessels. Finally, another part of the Council's motion states that "fish" harvested with catcher vessel QS may not be frozen onboard the vessel using those QS. The non-specific "fish" in this case indicated to NOAA that a broader interpretation of the provision to use catcher vessel IFQ on freezer vessels operating as catcher vessels would be consistent with Council intent while allowing for less discard waste of halibut.

*Comment 59:* Exactly what is "QS?" The preamble to the proposed rule suggests that QS is related to a person's catch history expressed in pounds, but the regulatory text implies that QS is a percentage.

*Response:* In § 676.11, "QS" is defined as a permit, the face amount of which is used as a basis for the annual calculation of a person's IFQ. This is a change from the definition of QS in the proposed rule that stated it was an amount of sablefish or halibut. This change is made because the proposed rule incorrectly implies that QS is expressed in volumetric terms. However, the units of a QS permit are simply "QS." A QS is converted into pounds of IFQ in the annual IFQ calculation. A QS is based on qualifying poundage of halibut or sablefish plus or minus any transferred amounts. Qualifying poundage is calculated for each qualified person who harvested

either IFQ species with fixed gear while the person owned or leased the vessel that made the landings during the base period (1984–1990 for halibut and 1985–1990 for sablefish). This calculation is done separately for each regulatory area. For example, if a qualified person's highest total landings of halibut in area 2C during the halibut base period is 20,500 pounds, then that person would receive an initial allocation of 20,500 QS. If that person subsequently sells 3,250 QS and later purchases 5,000 QS, then that person would hold 22,250 QS of halibut in area 2C. The amount of IFQ that will stem from this QS in any year will depend on two other variables for this area, the QS pool and the catch limit for halibut prescribed by the IPHC. Although it is true that dividing any person's QS by the QS pool for an area would result in a ratio, QS is not expressed as a percentage because the QS pool may vary from year to year. This is particularly likely as disputes over initial allocations of QS are resolved, but could continue thereafter as a result of enforcement actions that sanction QS. It would be difficult for fishermen to trade portions of a percentage that is annually changing. Expressing QS as a whole number should facilitate the transfer of QS as envisioned by the Council. The QS pool will be fixed each year on January 31 for purposes of calculating each IFQ for that year. Activity in transfers of QS and IFQ is expected to be heightened in January and February as fishermen plan their operations for the coming IFQ fishing season.

**Comment 60:** The definition of "IFQ crew member" at § 676.11 is limited to "individuals" and catcher vessel QS may be transferred only to IFQ crew members according to § 676.21(b). This would prevent corporate "persons" that receive an initial allocation of catcher vessel QS from acquiring more QS. This limitation was not intended by the Council. Also, the crew member definition should be more specific about experience in the harvesting of fish. Five months of experience as a marine engineer, cook, or processing crew member was not supposed to qualify someone for "IFQ crew member" status.

**Response:** NOAA agrees that the proposed rule at § 676.21(b) was inconsistent with Council intent to allow "persons" that are not "individuals" to acquire catcher vessel QS if they received an initial allocation of catcher vessel QS. However, this intent does not apply in IFQ regulatory area 2C for halibut, nor does it apply east of 140° west longitude for sablefish (see response to comment 68).

Therefore, this paragraph is changed to add the provision that catcher vessel QS for use outside the regulatory areas specified above may be transferred to a person that received an initial allocation of catcher vessel QS. This change makes this paragraph more consistent with § 676.22(j) which provides for corporate "persons" that received an initial allocation of catcher vessel QS to acquire more QS for use outside the regulatory areas specified above in the name of the corporation or partnership instead of an individual. This change also clarifies the Council's intent to provide an exception to the basic requirement that such QS must be transferred to individuals as a protection against corporate buy out of catcher vessel QS. The definition of "IFQ crew member" at § 676.11 specifically states that experience must be as part of the harvesting crew (see response to comment 79).

**Comment 61:** The proposed rule preamble text regarding the calculation of initial QS could be misinterpreted to mean that fishermen simply total the highest catches over 5 years and all areas. The Council intended that these calculations be area-specific.

**Response:** The proposed rule preamble states that "each initial QS calculation would be specific to a regulatory area for which a catch limit of halibut or fixed gear sablefish is specified" (57 FR 57134, column 2, line 23). Moreover, the regulatory text at § 676.20(b) clearly states that initial QS is calculated "in each regulatory area."

**Comment 62:** The proposed rule preamble and proposed regulations do not fully explain the vessel category assignments of QS. It should be made clear that the assignment scheme is based on the number of vessels on which landings of fixed gear groundfish and halibut were made during a person's most recent year of participation. Also, the rule should clarify vessel category assignments if landings were made in more than one vessel category during the most recent year of participation or if no sablefish or halibut were landed that year.

**Response:** The proposed rule preamble refers the reader to Figures 2a and 2b in section 5.0 of the FEIS. These figures graphically describe the decision process effecting vessel category assignments. This decision process is described in regulatory text at § 676.20(c). However, the proposed rule was not clear about the assignment of QS to vessel categories when two or more vessels in different categories would be assigned QS. It also neglected the possibility that none of a person's vessels harvested halibut or sablefish

with fixed gear during the person's most recent year of participation. Therefore, this section is changed as follows: First, the definition of "participation" that was at paragraph (8) is moved to the introductory text of paragraph (c) and revised to define "the most recent year of participation." Second, the text of paragraphs (6), (7), and (8) is changed, and a new paragraph (9) is added, to clarify that vessel category is not a factor in determining whether a person qualifies for QS. Instead, the assignment of QS is made to a vessel category after qualification for QS is determined, based on the vessel that person used in that person's most recent year of participation. Third, paragraphs (6) and (7) are revised to more clearly describe vessel category assignments if, in the most recent year of participation, a qualified person used more than one vessel in different categories, or that person used one vessel in one category for halibut and another vessel in a different category for sablefish. Finally, paragraph (8) was changed, and paragraph (9) added, to more clearly explain the assignment of QS to vessel categories in the event that no halibut or sablefish were landed in the most recent year of participation. These changes are necessary to clarify the vessel category decision process.

**Comment 63:** The proposed rule is ambiguous about the disposition of landings from a vessel made by someone other than the QS applicant. If the QS applicant is not able to get a confidentiality waiver from that individual, would the applicant be credited with those landings even though he could not personally claim them on his initial QS application?

**Response:** Initial allocations of QS will be made based on legal landings recorded on Federal weekly production reports required by §§ 672.5 and 675.5, or recorded on fish tickets required by the laws of the States of Alaska, Washington, Oregon, or California. Different confidentiality protections apply to each of these reports. For example, section 303(d) of the Magnuson Act prohibits NMFS from releasing catch and production data reported in weekly production reports in a manner that directly or indirectly discloses the identity or business of the person who submitted the report. NMFS may release these catch and production data to the submitter of the weekly production report (i.e., the vessel operator and the vessel owner), both of whom are responsible for the submission of these reports under Federal fishery regulations.

State laws regarding the confidentiality of fishery data apply to

the release of catch and landings data recorded on state fish tickets. For example, the confidentiality of data recorded on State of Alaska fish tickets must be maintained pursuant to Alaska Statutes 16.05.815. The State's Department of Law has concluded that these data may not be released to a vessel owner or lease holder unless (a) the vessel owner or lease holder recorded the landing on a State fish ticket, or (b) the vessel owner or lease holder obtains a waiver of confidentiality from the individual who recorded the landings on the fish ticket.

Due to the various confidentiality protection afforded by state and Federal law, it is possible that a QS applicant will be eligible for an initial allocation of QS based on legal landings recorded or submitted to NMFS or to a state agency by a person other than the applicant. Under such circumstances, confidentiality laws will prevent NMFS from crediting those landings data to the QS applicant without a written confidentiality waiver signed by the submitter.

*Comment 64:* The proposed rule preamble and regulatory text at § 676.20(d)(2) indicate that initial allocations of QS will be based on uncontested catch and vessel ownership or lease data. It is possible that the ultimate resolution of contested data could affect the vessel category assignment of the original uncontested data. How would this be resolved?

*Response:* Each allocation of QS will be assigned to a vessel category as prescribed at § 676.20(c). The potential of a person receiving an initial allocation of QS in more than one vessel category is addressed in that paragraph. This regulation makes no provision for changing the vessel category assignment of QS after it has been issued because such an event was not contemplated by the Council in its motion. Unique vessel category assignment problems will be considered on a case-by-case basis and assignments may be appealed.

*Comment 65:* The IFQ program approved by the Council contained a provision for overages but none for underages. Adding a harvest underage (§ 676.17(b)) to the following year's IFQ was discussed by the Council and rejected due to biological concerns.

*Response:* NOAA agrees that large amounts of underages in any year could provide for a total IFQ harvest in excess of the fixed gear TAC. At the extreme, NOAA would have to limit the reallocation of underages if overfishing were threatened. Therefore, §§ 676.17(b) and 676.20(f)(1) are changed to delete authority to reallocate unharvested amounts of IFQ less than 5 percent of

the amount specified under the IFQ permit. As originally proposed, amounts of IFQ less than 5 percent of the amount specified under the IFQ permit could be reallocated to the following year. This was intended to complement the reverse provision of subtracting up to 5 percent of an IFQ overage from the allocation in a succeeding year and to reduce overages. Adding large amounts of unharvested IFQ to a succeeding year's total IFQ allocated could result in a more serious biological problem than subtracting overharvested IFQ. Unharvested amounts of IFQ in any year or area will be foregone in subsequent years or other areas.

*Comment 66:* The proposed rule would not allow a QS owner to sell all QS in any year in which it was leased.

*Response:* No part of any QS can be transferred at once to different persons. A QS transfer would not be approved if the person transferring it did not currently hold it. Leased QS is held by the lease holder, not the original QS holder, until the lease expires. However, a transfer of QS to one person could be made effective immediately after the expiration of a lease to a different person.

*Comment 67:* The Council intended the ownership caps to apply to QS and IFQs, but the proposed rule would allow a person to acquire QS up to the ownership limit regardless of the amount of IFQ it represents. The Council understood that ownership of QS up to the 1 percent limit (for sablefish) could result in more than 1 percent of the IFQ for an area in subsequent years. This could result from variance in the QS pool or the area TAC or both. The excess IFQ in such cases should be usable providing that the QS and IFQ limits were not exceeded in the year they were acquired. However, excess IFQ should not be issued if the QS on which it is based is acquired through inheritance or court order.

*Response:* The rule differs from the language of the Council's motion with respect to personal limits on QS or IFQ. This difference was explained in the preamble to the proposed rule (under "Limits on QS Use" at 57 FR 57137). Briefly, it is neither expedient nor practical for the Secretary to impose a limit on the amount of QS that a person "owns" or "holds" as contemplated by the Council. This is because some transfers will occur by operation of law that are not approved by the Regional Director. However, the Regional Director will control the "use" of QS to harvest IFQ fish through the issuance of an IFQ permit. Therefore, the rule indirectly implements the Council's limits on "owning" QS by imposing a limit on

"using" QS. In practice, the QS use limitations prescribed at § 676.22 (e) and (f) are governed by the amount of approved QS relative to the QS pool for an area or combined areas. To this extent NOAA notes that proposed § 676.22(e) incorrectly specifies the sablefish QS use limit as 1 percent of the combined sablefish TAC for the GOA and BSAI areas. The limit should be 1 percent of the combined total sablefish QS for the GOA and BSAI areas to be consistent with the Council's motion and amendment text, with the use limit for the area east of 140° west longitude, and the halibut QS use limits. This mistake in the proposed rule is corrected by adding text in the first sentence of § 676.20(f) limiting the assignment of IFQ to the QS use limitations specified at § 676.22 (e) and (f). This change clarifies that the QS use limitations will be governed by the issuance of IFQ on approved amounts of QS that are within those limitations unless excess amounts were received by the QS holder in the initial allocation.

Approved amounts of QS will be issued all of the IFQ due from that QS up to the prescribed limits. The only exception is that an initial allocation of QS that exceeds a use limit will be issued additional IFQ based on that part of the initially allocated QS that is over the limit. Changes in the QS pool may affect QS use, but changes in the TAC will not. For example, sablefish QS (not initially allocated) at the 1 percent limit one year could be fully used by having an IFQ permit issued based on the full amount of QS. If the QS pool is decreased in the following year, then the sablefish QS, unchanged from the previous year, will exceed the 1 percent limit. An IFQ permit would be issued on 1 percent of the QS, and the excess QS over 1 percent would not be "funded" with IFQ that year. Changes in the QS pool from year to year, however, are likely to be less pronounced than changes in the TAC. Sablefish QS holdings at or near the use limits may result in sablefish IFQ that is more or less than 1 percent of the TAC (or of the total IFQ) in any given year. Hence, if a QS holding within use limits yields an IFQ that is excess to 1 percent of the TAC, that IFQ would still be available to harvest by the holder of the QS on which the IFQ is based. However, IFQ would not be issued for transferred QS that has not been approved by the Regional Director or QS in excess of the use limitations (unless received in the initial allocation).

*Comment 68:* An exception to the requirement for catcher vessel QS holders to be onboard the vessel during fishing operations is provided at

§ 676.22(i)(1). This exception would allow an individual who receives an initial allocation of catcher vessel QS to be represented onboard by a hired skipper. The exception does not apply to individuals who receive an initial allocation of halibut in area 2C or sablefish east of 140° west longitude. The rule should clarify that it also does not apply to corporations or partnerships that receive initial QS in these areas. Also, the rule should clarify that corporations and partnerships that receive initial QS for these areas must have any additional QS in an individual's name and that individual must be onboard the vessel during harvesting and landing of IFQ species.

*Response:* The exception to the catcher vessel QS-holder-onboard requirement at § 676.22(i) is applied to corporations and partnerships at § 676.22(j). NOAA agrees that explanatory language in the Council's IFQ motion and amendment text indicate that the exception does not apply to additional catcher vessel QS of halibut in area 2C or sablefish east of 140° west longitude. Therefore, § 676.22(j) is changed to require corporations and partnerships to receive transferred catcher vessel QS of halibut in area 2C or sablefish east of 140° west longitude only in the name of an individual. This change clarifies that the provisions for catcher vessel QS use by corporations and partnerships apply only to initial allocations of halibut QS in area 2C and to initial allocations of sablefish QS in the area east of 140° west longitude. Transfers of additional QS within these areas must be to an individual as required by § 676.21(b) and be used pursuant to § 676.22 (c) and (i).

*Comment 69:* The provision to eliminate the fixed gear sablefish reserve was not addressed by the Council in its plan amendment language.

*Response:* Although the Council's IFQ motion and plan amendment text were silent on using the reserve, the language of both documents refers to determining the IFQ by multiplying the QS/(QS pool) ratio to the fixed gear TAC. In the BSAI area, the TAC for any species or gear group subdivision of a species is the TAC that is annually recommended by the Council and specified by the Secretary pursuant to § 675.20(a)(2). Initially, 15 percent of each TAC is placed in a reserve which is not designated by species (§ 675.20(a)(3)) so there is no "sablefish reserve" per se. The reserve is used during the fishing year to account for uncertainty in biological estimates and fishing operations. The amount available for

fishing after subtraction of the reserve is the initial TAC and is specified annually (e.g., 58 FR 8703, February 17, 1993). NOAA interpreted the Council motion and plan amendment text to mean the full TAC, without deduction for the reserve, because the text used "TAC" not "initial TAC." This interpretation is reasonable because any reapportionment of the reserve to fixed gear sablefish during the fishing year would require a mid-year allocation of IFQ. Such mid-year allocations would be disruptive to the fishing and business plans of sablefish fishermen.

*Comment 70:* Regulations regarding permits at § 676.13(a) should include a requirement that the IFQ permit and IFQ card correspond to the same allocation to prevent someone from using a permit and card issued to different people. Also, a statement should be added to § 676.13(b) stating that permits will identify the initial allocation status of the permit holder. This would assure that IFQ corresponding to initially allocated QS for halibut in area 2C, for example, may be harvested and landed by hired skippers.

*Response:* IFQ permits and cards may be issued to different persons. For example, an IFQ permit holder may want to use a hired skipper or crew to catch and land IFQ fish on the permit holder's allocation. In this case, the permit holder would request NMFS to issue additional IFQ cards to those specified individuals. Each additional card, however, would be coded so that landings made with those cards would be tied to one IFQ allocation. Additional coding on an IFQ card would indicate whether it was tied to an initial allocation and therefore eligible for the QS-holder-onboard exemption at § 676.22(i)(1).

*Comment 71:* In § 676.14(d), does "holding a valid IFQ permit and IFQ card" mean that the same person's name would be on each? The Council did not want to prohibit hired skippers from undertaking dockside sales.

*Response:* No. The same person's name does not have to be on the IFQ permit and the IFQ card. There is no limit on the number of IFQ cards that could be issued to separate individuals to harvest halibut and sablefish against the IFQ specified under a single IFQ permit. Hence, hired vessel masters would be issued an IFQ card based on the IFQ permit of the vessel owner. Halibut and sablefish landed with an IFQ card would be credited to the associated IFQ permit.

*Comment 72:* The prohibition at § 676.16(h) (formerly § 676.16(g)) should be more explicit. It should say it is

unlawful to: "Discard Pacific cod and rockfish when any IFQ card holder onboard holds unused sablefish or halibut IFQ for that vessel category and the area in which the vessel is operating."

*Response:* In the final rule, § 676.16(g) is redesignated § 676.16(h) and revised pursuant to comment 78. The suggested change is not necessary because the revised paragraph prohibits the discard of Pacific cod or rockfish that are taken when IFQ halibut or IFQ sablefish are onboard a vessel. Further, the harvest of IFQ halibut or IFQ sablefish in an area or vessel category other than that for which an IFQ card holder has authority to harvest would violate § 676.22(a). Hence, § 676.16(h) would not apply to an IFQ card holder who is involved in fixed gear fishing that results in the catch of Pacific cod or rockfish from a vessel and in an area other than that specified under his IFQ permit. In this case, he would be required to discard any bycatch of halibut or sablefish.

*Comment 73:* At § 676.17(a)(1), a requirement to have a valid IFQ card with unused IFQ should be added.

*Response:* NOAA agrees and has changed this paragraph to require a person seeking a vessel clearance under § 676.17(a)(1) to have valid IFQ card or cards. This additional requirement is consistent with possession of a valid IFQ permit. The requirement to have "IFQ that is equal to or greater than all IFQ sablefish and IFQ halibut onboard" is the same as having unused IFQ because IFQ is decreased by the amount of halibut or sablefish landed.

*Comment 74:* A transfer of QS should be disapproved, under § 676.21(e), if it would result in an amount of IFQ that exceeds the use limits based on the current year TACs. Also, approving a transfer and then disallowing the use of the QS is illogical.

*Response:* The IFQ program implementing rules make a necessary distinction between QS and IFQ. Basically, an annual allocation of IFQ to any person is based on the QS held by that person on January 31 of that year (§ 676.20(f)(2)), to the extent that the QS held is within QS limits; use limits to a QS holder are not based on the current year TACs (see response to comment 67). A person can increase his or her IFQ within a year by receiving an approved transfer of IFQ. This can also be done by transferring QS on which the transferred IFQ is based or by leasing IFQ within the limits prescribed at § 676.21. However, QS could be transferred without transfer of its associated IFQ. For example, a fisherman may have completely used his IFQ by June of one year and then

transferred his QS to another fisherman later the same year. The fisherman receiving such QS would not be allocated IFQ associated with the transferred QS until the following year. A decision to approve or disapprove a QS transfer in this case could not be based on the resulting amount of IFQ because the IFQ does not exist in the current year; it would not be realized by the QS holder until the year following approval of the QS transfer. In a different scenario, QS could be transferred by operation of law. Issuance of IFQ associated with that QS (if any) would not occur until the Regional Director approves the transfer for purposes of harvesting halibut or sablefish pursuant to § 676.21(e). This independent handling of QS and IFQ provides an effective means of implementing the QS ownership and holding limitations prescribed at § 676.22. Paragraph (c) of § 676.21 prevents QS from being used for fishing prior to the Regional Director's approval if the transfer occurs by operation of law, and has been rewritten to clarify this restriction in reference to paragraph (e) of this section. For administrative efficiency, all transferred QS will be controlled in the same manner (i.e., through the issuance of IFQ) because the only way for QS to be used to harvest halibut or sablefish is to have the associated IFQ (see response to comment 67).

*Comment 75:* An additional criterion for transfer approval should be added to § 676.21(e)(1) to prevent resale/buyback arrangements designed to circumvent anti-leasing provisions. The criterion would stipulate that the person applying to receive catcher vessel QS had not previously transferred QS to the same person applying to relinquish it.

*Response:* No change is made based on this comment. The suggested requirement would unnecessarily constrain the market for QS and add complexity that could slow transfer approval. The prevention of leasing can be accomplished more simply by careful monitoring of QS transfers over time. If additional information about QS transfers is needed to prevent leasing, it can be requested without changing the regulations under § 676.21(e)(1)(vii).

*Comment 76:* At § 676.24(j)(5) (formerly § 676.25(j)(5)), landings of CDQ halibut or sablefish should be made by a person with a valid CDQ card and only to a registered buyer.

*Response:* NOAA agrees and this paragraph (which was changed to § 676.24(j)(5); see change 16 above) is changed to clarify that CDQ halibut or sablefish must be landed by a person with a valid CDQ card and to a person

with a valid registered buyer permit. This change corrects an editorial oversight in the proposed rule. In addition, the same exceptions for dockside sales and outside landings as are provided at § 676.14(d) are provided for CDQ halibut or sablefish in § 676.24(j)(5).

*Comment 77:* The proposed regulations regarding sablefish would not apply in State waters. This should be made more explicit. In particular, they should state that sablefish fishing in Prince William Sound and waters of Southeast Alaska would be exempt from the Federal IFQ program and that the State is not relinquishing management authority over fisheries that may develop in other State waters. In addition, State regulations allow the retention of sablefish incidentally harvested by drift gillnet gear in Cook Inlet and other places. The proposed rules would require such sablefish to be treated as prohibited species. Although the incidental catch of sablefish while salmon fishing is not likely, existing State regulations allow for retention while the proposed rules would not. There are other potential inconsistencies relating to the possession of sablefish with an IFQ card in inside versus outside waters.

*Response:* NOAA agrees that regulations implementing the IFQ program with regard to sablefish do not apply in State internal waters and the adjacent territorial sea (State waters) to persons who do not have an IFQ permit described at § 676.13. However, the regulations in part 676 apply to all persons with current IFQ permits even when they operate within State waters. This clarification is made by revising the definitions of "IFQ sablefish" and "IFQ regulatory area" at § 676.11 and by adding text to §§ 676.12(c) and 676.13(a) relative to fishing within State waters. Drift gillnet gear is not included in the definition of "fixed gear" at § 676.11, so sablefish harvested in State waters by a person with this gear would not be subject to IFQ program rules regardless of whether that person held an IFQ permit.

*Comment 78:* Alaska Department of Fish & Game (ADF&G) is concerned about how the proposed bycatch allowances and season structure will affect other fisheries managed by either ADF&G or NMFS. These concerns are as follows:

(a) Prohibiting the discard of Pacific cod or rockfish may preempt existing State regulations regarding harvest allowances for these species. It should be more clear that the bycatch, directed fishing allowances, or annual harvest

limits set by either ADF&G or NMFS cannot be exceeded.

(b) The sablefish bycatch allowance of 4 percent may have to be adjusted upward to prevent waste.

(c) The proposed sablefish season of March 1 through November 30 would not provide adequate protection for spawning sablefish stocks. Also, sablefish from internal waters could be still on the outside grounds early in the year. This suggests that early-year harvests could reduce later harvests of sablefish in State waters. ADF&G recommends a sablefish season of May 15 through November 30. This was the season for offshore sablefish prior to implementation of the Magnuson Act. It would avoid overlap with sablefish and halibut spawning periods, reduce the potential of double-harvesting sablefish populations from internal waters, and reduce the likely high bycatch of halibut during an early-season sablefish fishery.

(d) If establishing the halibut season on an annual basis is left to the IPHC, there is a potential for different seasons for both species. This seems contrary to the intent of minimizing bycatch problems.

*Response:* (a) NOAA agrees that retention of Pacific cod or rockfish while fishing in State waters should not be required in contravention of State regulations. Section 676.16 is changed to expand the exceptions to the prohibition on discarding fish to include State requirements in redesignated paragraphs (h) and (l). Paragraph (h) prohibits the discard of Pacific cod or rockfish taken incidental to the harvest of IFQ fish to prevent wasting these species. Paragraph (l) prohibits the discard of halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ card holder onboard has unused IFQ for these species in the area and vessel category in which the catcher vessel is operating. Both of these paragraphs provide exceptions to these discard rules in the event that other Federal regulations require discarding of these species for biological conservation purposes.

(b) Directed fishing standards for sablefish caught with fixed gear are specified at §§ 672.20(g)(4) and 675.20(h)(4). When directed fishing is prohibited, amounts of sablefish on a vessel in excess of prescribed amounts would constitute a violation of the prohibition. This management tool is commonly used in-season to close an open access fishery when the TAC for sablefish is nearly exhausted. Under the IFQ program, however, the directed fishing season for sablefish would remain open during the dates prescribed

at § 676.23(b). Sablefish caught with fixed gear at other times during the year could be retained by IFQ holders within the "bycatch allowances" specified in §§ 672.20(g)(4) and 675.20(h)(4). Other catches of sablefish with fixed gear would have to be discarded. NOAA perceives no need at this time to adjust these bycatch limits for sablefish as they are unlikely to allow for any more waste than is occurring already under open access management. To clarify this point, however, § 676.23(b) references §§ 672.20(g) and 675.20(h) and is changed to provide specifically for retention of sablefish up to prescribed limits during periods when directed fishing is prohibited.

Paragraph (a), in regards to halibut, references §§ 672.20(e) and 675.20(c) and states that catches of halibut by fixed gear taken at times other than those specified at 50 CFR part 301 must be treated as prohibited species.

(c) Harvesting sablefish during their spawning period is not necessarily harmful to the stock providing that such harvesting does not result in recruitment overfishing. Another argument against harvesting during or immediately after winter spawning is that the fish are in poor physical condition and product yield and value is less than if harvesting were delayed until summer and fall months. The IFQ program will allow fishermen to time their harvesting according to market demand. If sablefish harvesting in the first 2 months of the season produces a low-valued product, then it is likely that few fishermen will participate in the fishery at that time. Although some fish tag recovery studies indicate migration of sablefish between EEZ and State waters in southeast Alaska, it is not clear that allowing fishing in the EEZ before May 15 will cause significant harm to sablefish fisheries in State waters later in the year. The inclusion of halibut in the development of the sablefish IFQ program was specifically intended to resolve a potential bycatch problem. Fishermen with IFQ for both species will be able to retain and land both species regardless of their target species. Hence, the IFQ program should minimize halibut bycatch wastage.

(d) Although it is true that halibut bycatch will be minimized only if the IPHC prescribes a compatible season for halibut fishing in and off of Alaska, NOAA is hopeful that the IPHC will take this action. The IPHC extended the season for the halibut fishery in area 2B in and off of British Columbia in response to a similar individual quota program implemented by Canada. NOAA is not changing the fishing season for halibut in this rule to prevent

conflict with the fishing seasons prescribed by the IPHC as required by the section 5(c) of the Halibut Act.

*Comment 79:* Regarding the definition of an "IFQ crew member," it may not be possible to determine the months of actual experience a person has accumulated from State records. In addition, the time requirement should be consistent throughout the rules (5 months at § 676.11 and 150 days at § 676.21(e)(2)(i)). Delete the words "at sea" from § 676.21(e)(2)(i) as this may prevent some participation in some fisheries that do not occur at sea. The rules should clarify what experience, in addition to actual harvesting, will qualify as crewing experience. For example, would preparing the vessel or gear, traveling to and from fishing grounds, tendering, working as a spotter pilot, piloting a vessel, acting as a skipper, or operating fishing gear qualify as harvesting crew experience?

*Response:* NOAA agrees and has clarified the definition of "IFQ crew member" by changing the minimum experience period from 5 months to 150 days. Although the Council's motion states the period in months, the same period in days is preferred because it is more specific, and makes the definition consistent with § 676.21(e)(2)(i). In addition, the kind of activities that would be done by "harvesting crew" are clarified. Examples of activities not considered work of a harvesting crew are added to the definition. The phrase "at sea" is deleted from § 676.21(e)(2)(i) to clarify that harvesting crew experience in a U.S. commercial fishery that does not occur "at sea," for example, in lakes or internal waters, would qualify for purposes of the IFQ crew member definition.

*Comment 80:* Regarding the proposed recordkeeping and reporting requirements, several inconsistencies with existing State regulations are noted. Reporting the landing of IFQ fish would be required within 6 hours, but the State requirement is within 7 days. The State does not require shipment reports as proposed by the IFQ regulations. Dockside sales of IFQ fish would require a buyers permit, but State regulations allow any permitted fisherman to sell unprocessed fish at the dock.

*Response:* NOAA perceives no conflict between these more restrictive Federal regulations on the reporting of IFQ fish and the existing State reporting requirements. The recordkeeping and reporting requirements of the IFQ program are not intended to preempt State reporting requirements, and are designed to adequately monitor IFQ landings and assure the integrity of the

program. NOAA is hopeful that the State and NMFS will develop procedures to minimize duplication in satisfying required reports. As such, the State may realize a benefit in better quality landings data submitted more quickly than under current procedures.

*Comment 81:* It is not clear whether the vessel check-out requirement at § 676.17(a) is in addition to, or substitute for, State requirements at 5 AAC 39.130 to report exports of unprocessed fishery resources.

*Response:* The vessel check-out requirement at § 676.17(a) is in addition to other reports and requirements that constitutionally may be imposed by State law.

*Comment 82:* The IFQ regulations should clarify that requirements to have an IFQ permit and a registered buyer permit are in addition to State requirements concerning permits for fishermen, buyers, and processors of fish.

*Response:* The permit requirements at § 676.13(a) are in addition to other requirements that constitutionally may be imposed by State law.

*Comment 83:* Language in § 676.24(a)(1) (formerly § 676.25(a)(1)) limits the eligibility of communities for the CDQ program to those that are "proximate to" an IPHC area. The State understands that this is in reference to the boundary of a particular management area and not a requirement that communities be proximate to the Bering Sea coast. As such, the communities listed in Table 1 of the proposed regulations are qualified to participate in the program. The IPHC management area that each eligible community qualifies for is that area in which the community either: (a) Lies between the points where the management area boundary intersects the coastline; or (b) is within 10 miles from the point where the management area boundary intersects the coastline, if the community lies outside the management area.

*Response:* The State's understanding is correct.

*Comment 84:* There appears to be no reason to require implementation of the CDQ program for halibut and sablefish to coincide with full implementation of the IFQ program. Development of the CDQ program could be constrained if it were to wait for completion of all IFQ administrative procedures. Could the CDQ program begin in 1993?

*Response:* Implementation of the CDQ program in 1993 would be administratively difficult for several reasons. First, the sablefish CDQ program requires (§ 676.24(b) (formerly § 676.25(b))) notice and comment on the



specific amounts of the sablefish CDQ reserve in the proposed and final harvest specifications published pursuant to § 675.20(a). These specifications for 1993 already have been published (57 FR 57718, December 7, 1992, and 58 FR 8703, February 17, 1993). Second, the halibut fishing periods prescribed at 50 CFR 301.7 are based on an open access management regime that is not relevant to a CDQ management regime. Changing these fishing periods for 1993 would require an extraordinary meeting of the IPHC and another Federal Register publication. Third, control of the halibut and sablefish CDQ programs would be exercised through the issuance of CDQ permits and CDQ cards (§ 676.24(j) (formerly § 676.25(j))). This control mechanism is designed to work with the IFQ permit and card system. NOAA has not yet fully developed either of these systems. Finally, the Council clearly intended that the CDQ program be implemented simultaneously with the IFQ program. Therefore, the CDQ program will be implemented concurrently with overall implementation of the IFQ program.

*Comment 85:* The proposed rule at § 676.24(b) (formerly § 676.25(b)) limits a sablefish CDQ allocation to any one applicant to a maximum of 12 percent of the total CDQ for all subareas. The Council's motion applied this restriction to any eligible community. It would be desirable to maintain the existing CDQ groupings that evolved under the pollock CDQ program first implemented in 1992. With no more than five or six CDQ group applications, the most that could be allocated under the proposed 12 percent limit would be 72 percent of the sablefish CDQ. The State recommends changing the rule to allow one applicant group to receive up to 33 percent of the total sablefish CDQ allocation, and that this provision be combined with the original Council proposal to limit any one community to no more than 12 percent of the total sablefish CDQ.

*Response:* After implementing the pollock CDQ program (57 FR 54936, November 23, 1992), NOAA agrees that limiting a CDQ allocation to any applicant to 33 percent of the total sablefish CDQ for all subareas would be more consistent with the pollock CDQ program (see § 675.27(c)(1)). However, it would be practically impossible to assure that no one community received more than 12 percent of the total sablefish CDQ when that community was grouped with other communities in receiving a CDQ allocation of up to 33 percent of the total. The approved FMP amendment text would limit any

western Alaska community to no more than 12 percent of the total sablefish CDQ. Under a literal interpretation of this text, it is conceivable that eight communities that may form a single group under the pollock CDQ program could receive virtually all of the sablefish CDQ. NOAA deviated slightly from this interpretation in the proposed rule by suggesting a 12-percent limit for any one applicant to simplify the accounting of sablefish landed against a CDQ allocation. For the reasons explained in the comment, this approach may not be ideal. Nevertheless, NOAA is not authorized to deviate substantially from the approved FMP amendment text. The Council could recommend another FMP amendment to the Secretary if this issue becomes a significant management problem in the future.

*Comment 86:* The proposed IFQ program will place increased demands on the State Commercial Fisheries Entry Commission (CFEC) for individual catch data and vessel ownership records. The CFEC's ability to respond to these requests has weakened in recent years due to budget reductions.

*Response:* NOAA intends to establish a unified database that includes all relevant catch and vessel ownership records on which the initial allocation of QS will be based. Cooperation with the CFEC and other state and Federal agencies will be necessary to establish this data set. After it is established, all queries should be directed to the IFQ program manager, Alaska Region, NMFS. Corroborating data from the State's fish ticket archives may be requested by fishermen. The State will be expected to respond to such requests as possible within its personnel and budget resources.

*Comment 87:* The State has a strong interest in collecting certain types of data on fish landings through its fish ticket system. These data are important for social and economic analyses. It is important that the IFQ program not interfere with the collection of these data. Further, monitoring the regional distribution of QS holdings is important because of concerns about social and economic impacts. The CFEC monitors permit transfers under the Alaska limited entry program because of these concerns and regularly reviews transfers to track changes in the residence status of permit holders. NMFS should monitor transfers of QS in similar ways.

*Response:* Implementation of the IFQ program should not interfere with the collection of fish ticket data by the State. NOAA is aware of the need to monitor the transfer of QS between rural and urban areas, and intends to develop

a QS transfer approval system that will provide useful data in response to social and economic impact concerns.

*Comment 88:* The major concern of the State is that the proposed IFQ program could lead to excessive consolidation of fishery access privileges and speculative investment in, and absentee-ownership of, QS by non-fishermen. These outcomes could cause substantial harm to Alaskan fishermen, shore-based processing industry, and coastal communities. For these reasons, the State considers the restrictions on transferability and use of QS to be essential to the success of the program.

*Response:* The limitations on QS use, QS and IFQ transfer, and the requirement for catcher vessel QS holders to be onboard during fishing operations are expressly intended to prevent the outcomes of concern to the State.

*Comment 89:* The North American Free Trade Agreement (NAFTA) appears to override the Council's intent to limit participants in the proposed halibut and sablefish IFQ program to U.S. citizens. Will Canadian or Mexican corporations be allowed to purchase halibut and sablefish QS under NAFTA? The Canadian IQ program allows foreign ownership of Canadian fishing rights because investment by Canadian corporations is not limited by a citizenship restriction. Will the United States reciprocate by relaxing the proposed citizenship requirements in the IFQ program?

*Response:* The U.S. citizenship requirements of the IFQ program will not be affected by NAFTA. The agreement includes an exception for the United States regarding fishing in U.S. waters.

*Comment 90:* The IFQ regulations should not discourage individuals from owning their vessels as solely-owned corporations for business reasons. As proposed, an individual who qualifies for an initial allocation of catcher vessel QS as an individual, but who later incorporates as a solely-owned corporation, would not be able to take advantage of the IFQ holder-on-board exception at § 676.22(i)(1) because the corporation now owns the vessel and not the individual. In addition, the same individual would not be able to transfer his QS to his solely-owned corporation because of the transfer restrictions at § 676.21. The rule should be modified to allow a solely-owned corporation to act as an individual for purposes of these sections.

*Response:* NOAA agrees that initial allocations of catcher vessel QS, as proposed, were too constraining and has

changed § 676.21(b) to allow individuals who receive an initial allocation of catcher vessel QS to transfer that QS to their solely-owned corporation. This will provide an individual who qualifies for an initial allocation of catcher vessel QS and subsequently forms a solely-owned corporation to enjoy the same benefits of being incorporated as the Council intended for corporations or partnerships that receive an initial allocation of catcher vessel QS. This change is consistent with the Council's intent and does not substantively change the effect of the rule because solely-owned corporations will be subject to the limitations of § 676.22(j) in the same manner as any other corporation or partnership that receives an initial allocation of catcher vessel QS. Note that § 676.22(j) also is changed by this action to prevent corporations from acquiring additional catcher vessel QS for halibut in area 2C or sablefish east of 14° west longitude (see response to comment 68). Hence, any corporation or partnership may receive transferred QS for these species in these areas only in the name of an individual, regardless of whether the corporation or partnership received an initial allocation as provided in § 676.21(b).

The basic policy regarding initial allocations of catcher vessel QS recognized the fact that many individuals who own and operate fishing vessels in the halibut and sablefish fisheries are incorporated for legitimate business reasons. Initial allocation to such persons as corporate entities was considered to be consistent with current practice in the fishery, providing that subsequent transfers of catcher vessel QS to a person who did not receive an initial allocation of catcher vessel QS, or to any person in IFQ regulatory areas 2C and east of 140° west longitude, were to individuals and also that a change in a corporate entity resulted in a transfer of its catcher vessel QS to an individual. This was to protect against a corporate buy out of a fishery that is characterized by small, family owned-and-operated fishing businesses. NOAA sees little distinction between such small family-owned businesses and solely-owned corporations.

NOAA does not agree, however, that § 676.22(i)(1) should be changed to accommodate solely-owned corporations. The exception provided to individuals by this paragraph is also provided to corporations by § 676.22(j). This paragraph accommodates, not discourages, solely-owned corporations or any other corporate entity or partnership in those areas of the fishery other than IFQ regulatory areas 2C and

east of 140° west longitude. Eventually, however, all such corporate entities that have catcher vessel QS must transfer it to an individual as required by § 676.22(j) as they acquire additional QS in area 2C or east of 140° longitude, and as they change through the addition of new corporate shareholders or partners. This requirement implements the policy of all catcher vessel QS ultimately being in the hands of individuals instead of corporations, and having those individuals onboard vessel at all times when fishing for and landing IFQ species.

*Comment 91:* What type of ownership interest is created by the IFQ plan, and what is the estimated value of that interest?

*Response:* The IFQ regulations allocate transferrable harvest privileges in the form of QS and IFQ in the halibut and sablefish fixed gear fisheries. The QS and IFQ may be held, used, purchased, sold, or otherwise transferred in accordance with the implementing regulations. However, these regulations do not convey property rights in the fishery resources, and cannot legally because no property rights can accrue until halibut or sablefish are reduced to one's possession by capture. Furthermore, the IFQ program is not irreversible. The Council and the Secretary have the statutory responsibility to conserve and manage these fisheries, and may modify or even terminate this program as necessary to meet that responsibility. Thus, the QS and IFQ allocated in accordance with these regulations is not necessarily permanent, and is subject to future regulatory changes that could result in diminution or even negation of QS and IFQ market value. As such, the QS and IFQ are temporary revokable permits that authorize the holder to participate in the fixed-gear fisheries for halibut and sablefish so long as the IFQ program remains in effect. Consequently, the IFQ program does not establish an entitlement to QS and IFQ, which, if "taken" by the Government, requires just compensation under the Fifth Amendment to the U.S. Constitution.

The market value of QS is difficult to predict because of unknown variables that will affect that value. For example, the market value could be affected by annual fluctuations in halibut and sablefish quotas, changes in market prices for halibut and sablefish, and future regulatory actions that could diminish or even negate the value of the QS and IFQ, and the public's perception of the duration of the program. In economic terms, the price that a fisherman is willing to pay for QS will

be no more than the net present value of its expected future earnings (minus fishing costs).

*Comment 92:* In describing various constraints of the proposed rule, public comment was specifically requested on 7 different types of restrictions. These restrictions would generally limit the economic efficiency of the fishing fleet operating under the IFQ program, and the Secretary expressed particular interest in the need or efficacy of the proposed restrictions. Such restrictions include QS use limitations (§ 676.22 (e) and (f)), vessel harvest limits (§ 676.22(h)), the catcher vessel QS holder-on-board requirement (§ 676.22(i)), and vessel category limitations (§ 676.16(o)). The Secretary also requested comment on whether the proposed 180-day QS application period was a reasonable length of time. Several letters of comment responded to these specific points. All of the comments supported the measures as proposed. Generally, they claimed that the restrictions were needed to mitigate the economic and social disruption that could occur under an untested or unrestricted IFQ program. Comments expressed the desire to maintain the basic character of the fixed gear fleet as being comprised mostly of small, owner-operator vessels, and prevent excessive consolidation. Comments also cited the need to maintain traditional relationships between vessel owner, crew, and processor, and to provide opportunity for crew members to move up to be a vessel owner. The restrictions would satisfy these needs, and losses in economic efficiency are outweighed by gains in social stability.

*Response:* NOAA notes these comments. No changes are made with respect to the proposed restrictions.

#### Classification

NOAA determined that Amendments 15 and 20 to the FMP and the companion regulatory amendment to effect the IFQ program for the Pacific halibut fishery in and off of Alaska are necessary for the conservation and management of the fixed gear sablefish and halibut fisheries in and off of Alaska. This final rule implementing Amendments 15 and 20 is published under section 305(a)(1) of the Magnuson Act that requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Secretary has determined that Amendments 15 and 20 are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary has determined also that the companion regulatory amendment to implement the

IFQ program for the Pacific halibut fishery in and off of Alaska is consistent with the Halibut Act and other applicable laws.

An FEIS for the amendments was filed with the Environmental Protection Agency; a notice of its availability was published on December 11, 1992 (57 FR 58805). The FEIS includes a regulatory impact review cost-benefit analysis. A copy of the FEIS and cost-benefit analysis may be obtained from the Council (see ADDRESSES).

A regulatory flexibility analysis was prepared that describes the effects this rule will have on small entities. This analysis is contained in the FEIS. Based on this analysis, the Secretary concluded that this rule will have a significant economic impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule (57 FR 57130, December 3, 1992).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) that have been approved by OMB. The estimated response time for each collection-of-information required during the 2-year implementation period is expected to be 5.5 hours for the QS application, 4 hours to file an appeal on a QS application, and 2 hours for an IFQ crew member eligibility application.

The estimated response time for each collection of information during each year after the implementation period is 1 hour for notification of inheritance of QS, 2 hours for the application for transfer or lease of QS/IFQ, 2 hours for the corporate/partnership or other entity transfer application, 0.5 hours for the registered buyer application, 0.1 hour for the dockside sale receipt, 0.1 hour for prior notice of landing, 0.1 hour permission to land IFQs at any time other than 06:00-18:00, 0.1 hour for the vessel clearance application, 0.2 hour for the IFQ landing report, 0.1 hour for a transshipment notice, and 0.2 hour for the shipment or transfer report.

Additional costs to the public totaling \$150,000 for the implementation period and \$225,000 for each subsequent year are proposed for the IFQ program.

The estimated response time for each information requirement of the CDQ portion of the IFQ program will be approximately 160 hours per CDP, 40 hours for each annual report, 40 hours for each final report, and 10 hours for each amendment to a CDP.

These reporting burdens include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS, Fisheries Management Division, Alaska Region, P.O. Box 21668, Juneau, AK 99802, and to OMB, Paperwork Reduction Project [OMB control numbers 0648-0272 (IFQs for Pacific Halibut and Sablefish in the Alaska Fisheries) and 0648-0269 (Western Alaska CDQ Program)], Washington, DC 20503.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

The final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Regional Director determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

The Regional Director has determined that fishing activities conducted under this final rule will not affect any endangered or threatened species listed under the Endangered Species Act (ESA) in any manner not already considered in the formal consultations conducted on the BSAI FMP and fishery (April 19, 1991), the 1992 BSAI TAC specifications (January 21, 1992), and Amendment 18 to the BSAI FMP (March 4, 1992) and the informal consultations conducted regarding the impacts of the 1993 BSAI TAC specifications on Steller sea lions (January 20, 1993) and the impacts of the 1993 BSAI and GOA groundfish fisheries on listed species of salmon (April 21, 1993) and listed species of seabirds (U.S. Fish and Wildlife Service, February 1, 1993; clarified February 12, 1993). Therefore, NMFS has determined that no further consultation, pursuant to section 7 of the ESA, is required for adoption of this final rule.

**List of Subjects**

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Parts 672, 675, and 676

Fisheries, Reporting and recordkeeping requirements.

Dated: November 1, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204, 672, and 675 are amended and 50 CFR part 676 is added as follows:

**PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS**

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. In § 204.1(b), the table is amended by adding the following entries, in numerical order, to read as follows:

**§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
.....	.....
676.13 .....	-0272
676.14 .....	-0272
676.17 .....	-0272
676.20(d) .....	-0272
676.20(e) .....	-0272
676.21(e) .....	-0272
676.21(f) .....	-0272
676.24(d) .....	-0269
676.24(g) .....	-0269
.....	.....

**PART 672—GROUND FISH OF THE GULF OF ALASKA**

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

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

4. Section 672.3 is revised to read as follows:

**§ 672.3 Relation to other laws.**

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the

EEZ of the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 620, 675, and 676.

(d) *Limited access.* Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 part 229.

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

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

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

6. Section 675.3 is revised to read as follows:

##### § 675.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska are set forth at 50 CFR parts 620, 672, and 676.

(d) *Limited access.* Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 part 229.

7. In § 675.20, the introductory text of paragraph (a)(3) is revised to read as follows:

##### § 675.20 General limitations.

(a) \* \* \*

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category, except the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category, except the hook-and-line and pot gear allocation for sablefish, is apportioned between DAH and TALFF. The reserve is not designated by species or species group, and any amount of the reserve may be apportioned to a target species, except

the hook-and-line gear and pot gear allocation for sablefish, or the "other species" category, provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

\* \* \* \* \*

8. A new part 676 is added to chapter VI of 50 CFR to read as follows:

#### PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

##### Subpart A—Moratorium on Entry [Reserved]

Sec.

676.1–676.9 [Reserved]

##### Subpart B—Individual Fishing Quota General Provisions

- 676.10 Purpose and scope.
- 676.11 Definitions.
- 676.12 Relation to other laws.
- 676.13 Permits.
- 676.14 Recordkeeping and reporting.
- 676.15 Vessel and gear identification.
- 676.16 General prohibitions.
- 676.17 Facilitation of enforcement and monitoring.
- 676.18 Penalties.

##### Subpart C—Individual Fishing Quota Management Measures

- 676.20 Individual allocations.
  - 676.21 Transfer of QS and IFQ.
  - 676.22 Limitations on use of QS and IFQ.
  - 676.23 IFQ fishing season.
  - 676.24 Western Alaska Community Development Quota Program.
  - 676.25 Determinations and appeals.
- [Reserved]

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

##### Subpart A—Moratorium on Entry [Reserved]

§§ 676.1–676.9 [Reserved]

##### Subpart B—Individual Fishing Quota General Provisions

##### § 676.10 Purpose and scope.

(a) Subparts B and C of this part implement the individual fishing quota management plan for the commercial fisheries that use fixed gear to harvest sablefish (*Anoplopoma fimbria*) and Pacific halibut (*Hippoglossus stenolepis*).

(b) Regulations in subparts B and C of this part govern the commercial fishing for sablefish by vessels of the United States using fixed gear within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority. Regulations in subparts B and C of this part also govern the commercial fishing for sablefish with fixed gear in waters of the State of Alaska adjacent to the

Bering Sea and Aleutian Islands management area and the Gulf of Alaska provided that such fishing is conducted by persons who have been issued permits under § 676.13 of this part. The regulations in this part do not govern commercial fishing for sablefish in Prince William Sound or under a State of Alaska limited entry program.

(c) Regulations in subparts B and C of this part govern the commercial fishing for Pacific halibut by vessels of the United States using fixed gear in Convention waters described in 50 CFR part 301 that are in and off of the State of Alaska.

##### § 676.11 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR 301.2, 620.2, 672.2, and 675.2, except as otherwise noted, the terms in this part have the following meanings:

*Catcher vessel*, as used in this part, means any vessel that is used to catch, take, or harvest fish that are subsequently iced, headed, gutted, bled, or otherwise retained as fresh fish product onboard during any fishing year, except when the freezer vessel definition applies during any fishing trip.

*Community Development Plan (CDP)* means an economic and social development plan for a specific Western Alaska community or group of communities that is approved by the Governor of the State of Alaska and recommended to the Secretary under § 676.24 of this part.

*Community Development Quota (CDQ)* means a western Alaska CDQ for Pacific halibut or sablefish that is assigned to an approved CDP.

*Community Development Quota Program (CDQ program)* means the Western Alaska CDQ Program implemented under § 676.24 of this part.

*Dockside sale* means the transfer of IFQ halibut or IFQ sablefish from the person who harvested it to individuals for personal consumption, and not for resale.

*Fixed gear* means:

(1) With respect to sablefish harvested from any reporting area of the Gulf of Alaska, all hook-and-line gear as that term is defined at § 672.2 of this chapter and, for purposes of determining initial allocation, all pot gear used to make a legal landing as that term is defined at § 676.20(a)(1)(v) of this part;

(2) With respect to sablefish harvested from any reporting area of the Bering Sea and Aleutian Islands management area, all hook-and-line gear as that term is defined at § 675.2 of this chapter and all pot gear; and

(3) With respect to Pacific halibut harvested from any IFQ regulatory area, all fishing gear comprised of lines with hooks attached, including setline gear as that term is defined at 50 CFR part 301.

*Freezer vessel* means any vessel that is used to process some or all of its catch during any fishing trip.

*Governor* means the Governor of the State of Alaska.

*Halibut CDQ Reserve* means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program.

*Harvesting or to harvest*, as used in this part, means the catching and retaining of any fish.

*IFQ crew member* means any individual who has at least 150 days experience working as part of the harvesting crew in any United States commercial fishery, or any individual who receives an initial allocation of QS. For purposes of this definition, "harvesting" means work that is directly related to the catching and retaining of fish. Work in support of harvesting but not directly involved with harvesting is not considered harvesting crew work. For example, searching for fish, work on a fishing vessel only as an engineer, or cook, or work preparing a vessel for a fishing trip would not be considered work of a harvesting crew.

*IFQ halibut* means any Pacific halibut (*Hippoglossus stenolepis*) that is harvested with fixed gear in any IFQ regulatory area.

*IFQ landing*, as used in this part, means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish.

*IFQ regulatory area*, as used in this part, means:

(1) With respect to IFQ halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E defined at 50 CFR part 301; and

(2) With respect to IFQ sablefish, any of the three regulatory areas in the Gulf of Alaska defined at § 672.2 of this chapter, and any subarea of the Bering Sea and Aleutian Islands management area defined at § 675.2 of this chapter, and all waters of the State of Alaska between the shore and the inshore boundary of such regulatory areas and subareas, except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program.

*IFQ sablefish* means any sablefish (*Anoplopoma fimbria*) that is harvested with fixed gear either in the EEZ off Alaska or in waters of the State of Alaska by persons holding an IFQ permit, but does not include sablefish harvested in Prince William Sound or

under a State of Alaska limited entry program.

*Individual* means a natural person who is not a corporation, partnership, association, or other such entity.

*Individual fishing quota (IFQ)* means the annual catch limit of sablefish or halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the total allowable catch of sablefish or halibut.

*IPHC* means the International Pacific Halibut Commission.

*Person*, as used in this part, means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

*Quota share (QS)* means a permit, the face amount of which is used as a basis for the annual calculation of a person's IFQ.

*Sablefish CDQ Reserve* means 20 percent of the sablefish fixed gear TAC for each subarea in the Bering Sea and Aleutian Islands management area for which a sablefish TAC is specified.

*Trip*, as used in this part, means the period of time from when a vessel commences fishing until either the vessel enters or leaves an IFQ regulatory area, or the commencement of an IFQ landing, whichever occurs first.

*United States citizen*, as used in this part, means:

(1) Any individual who is a citizen of the United States at the time of application for QS; or

(2) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

#### § 676.12 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Additional regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR part 301.

(c) *Domestic fishing for groundfish.* Additional regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 672 and 675, respectively, and at 50 CFR part 620. Persons fishing for

sablefish in the territorial sea and internal waters of the State of Alaska also should consult pertinent regulations of the State.

#### § 676.13 Permits.

(a) *General.* (1) In addition to the permit and licensing requirements prescribed at 50 CFR parts 301, 672, 675, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have onboard:

(i) A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder and a copy of the most recent accompanying statement specifying the amount of each species that may be harvested during the current IFQ fishing season; and

(ii) An original IFQ card issued by the Regional Director.

(2) Any person who receives IFQ halibut or IFQ sablefish from the person(s) that harvested the fish must possess a registered buyer permit, except under conditions of paragraphs (a)(2)(i), (ii), or (iii) of this section. A registered buyer permit also is required of any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

(i) In a dockside sale;

(ii) Outside of an IFQ regulatory area;

or

(iii) Outside the State of Alaska.

(b) *Issuance.* (1) IFQ permits and cards will be renewed or issued annually by the Regional Director to each person with approved QS for IFQ halibut or IFQ sablefish allocated in accordance with § 676.20 of this part. Each IFQ permit issued by the Regional Director will identify the permitted person and will be accompanied by a statement that specifies the amount of IFQ halibut or IFQ sablefish that person may harvest from a specified IFQ regulatory area using fixed gear and a vessel of a specified vessel category. Each IFQ card issued by the Regional Director will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ.

(2) Registered buyer permits will be renewed or issued annually by the Regional Director to persons that have a registered buyer application approved by the Regional Director.

(c) *Duration.* (1) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the

amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures). An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures), or cancelled on request of the IFQ permit holder.

(2) A registered buyer permit authorizes the person identified on the permit to receive or make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the registered buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures).

(d) *Alteration.* No person may alter, erase, or mutilate any IFQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated is invalid.

(e) *Transfer.* The IFQ permits issued under this section are not transferable except as provided under § 676.21 of this part. The IFQ cards and registered buyer permits issued under this section are not transferable.

(f) *Inspection.* (1) A legible copy of any IFQ permit issued under this section must be carried onboard the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained onboard. Except as specified in § 676.22(d) of this part, an individual that is issued an IFQ card must remain onboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card until all such fish are landed, and must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, NMFS enforcement aide, or registered buyer.

(2) A legible copy of the registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer or NMFS enforcement aide.

(g) *Permit sanctions.* Procedures governing permit sanctions and denials are found at 15 CFR part 904, subpart D.

#### § 676.14 Recordkeeping and reporting.

In addition to the recordkeeping and reporting requirements specified in 50 CFR parts 301, 672, and 675, the following reports are required.

(a) *Prior notice of IFQ landing.* The operator of any vessel making an IFQ landing must notify the Alaska Region, NMFS, no less than 6 hours before landing IFQ halibut or IFQ sablefish,

unless permission to commence an IFQ landing within 6 hours of notification is granted by an authorized enforcement officer. Such notification of IFQ landings must be made to the toll-free telephone number specified on the IFQ permit between the hours of 06:00 and 24:00 Alaska local time. The notification must include the name and location of the registered buyer(s) to whom the IFQ halibut or IFQ sablefish will be landed and the anticipated date and time of landing.

(b) *IFQ landing report.* Registered buyers must report their IFQ landings in the manner prescribed on the registered buyer permit within 6 hours after all such fish are landed and prior to shipment or departure of the delivery vessel from the landing site.

(1) IFQ landings may be made only between the hours of 06:00 and 18:00 Alaska local time unless permission to land at a different time is granted in advance by a NMFS enforcement officer or NMFS enforcement aide. An IFQ landing may continue after this time period if it was started during the period.

(2) All IFQ landings and all fish retained onboard the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized law enforcement officers, NMFS enforcement aides, or observers.

(3) Information contained in a complete IFQ landing report shall include the date, time, and location of the IFQ landing; the names and permit numbers of the IFQ card holder and registered buyer; the product type landed; and the fish product weight of sablefish and halibut landed.

(c) *Shipment report.* All registered buyers, other than those conducting dockside sales, must report their shipments or transfers of IFQ halibut and IFQ sablefish. A Shipment Report must be submitted for any shipment or transfer of IFQ halibut or IFQ sablefish to any location other than the location of the IFQ landing. Such reports must be submitted to the NMFS, Alaska Region, prior to shipment or transfer, in a manner prescribed on the registered buyer permit. Shipment Reports must specify the species and product type being shipped, the number of shipping units, fish product weight, the name of the shipper and receiver, the name and address of the consignee and consignor, the mode of transportation, and the intended route.

(1) A registered buyer must assure that shipments of IFQ halibut or IFQ sablefish from that registered buyer in Alaska or in any IFQ regulatory area to a destination outside Alaska or outside an IFQ regulatory area do not commence

until the Shipment Report is received by the Alaska Region, NMFS.

(2) A registered buyer must assure that a copy of the Shipment Report or a bill of lading that contains the same information accompanies the shipment to all points of sale in Alaska and to the first point of sale outside of Alaska.

(d) *Dockside sales and outside landings.* (1) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct dockside sales of IFQ halibut or IFQ sablefish to persons who have not been issued registered buyer permits. The person making such an IFQ landing must submit an IFQ landing report in the manner prescribed in paragraph (b) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested. A receipt that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the sablefish or halibut transferred must be issued to all individuals receiving IFQ halibut or IFQ sablefish through a dockside sale.

(2) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct IFQ landings outside of an IFQ regulatory area or the State of Alaska to a person who does not hold a registered buyer permit. The person making such an IFQ landing must submit an IFQ landing report in the manner prescribed in paragraph (b) of this section.

(e) *Transshipment.* No person may transship processed IFQ halibut or IFQ sablefish between vessels before providing at least 24-hours advance notification to a NMFS enforcement officer that such transshipment will occur. No person may transship processed IFQ halibut or IFQ sablefish between vessels at any location outside the boundaries of a primary port listed in § 676.17 of this part.

(f) A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer or NMFS enforcement aide for a period of 3 years.

#### § 676.15 Vessel and gear identification.

Regulations pertaining to vessel and gear markings and limitations are set forth in 50 CFR part 301, 672.24, and 675.24.

#### § 676.16 General prohibitions.

In addition to the prohibitions specified in §§ 620.7, 672.7, and 675.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to submit, or submit inaccurate information on, any report,

application, or statement required under this part;

(b) Intentionally submit false information on any report, application, or statement required under this part;

(c) Retain halibut or sablefish caught with fixed gear without a valid IFQ permit and without an IFQ card in the name of an individual onboard;

(d) Except as provided at § 676.17 of this part, retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is operating, and that is currently held by all IFQ card holders onboard the vessel;

(e) Possess, buy, sell, or transport IFQ halibut or IFQ sablefish harvested or landed in violation of any provision of this part;

(f) Make an IFQ landing without an IFQ card in the name of the individual making the landing;

(g) Possess on a vessel or land IFQ sablefish concurrently with non-IFQ sablefish, except that CDQ sablefish may be possessed on a vessel and landed concurrently with IFQ sablefish;

(h) Discard Pacific cod or rockfish that are taken when IFQ halibut or IFQ sablefish are onboard unless Pacific cod or rockfish are required to be discarded under §§ 672.20 or 675.20 of this chapter or unless, in waters within the State of Alaska, Pacific cod or rockfish are required to be discarded by laws of the State of Alaska;

(i) Transfer QS or IFQ (other than by operation of law) without the prior written approval of the Regional Director;

(j) Harvest on any vessel more IFQ halibut or IFQ sablefish than are authorized under § 676.22 of this part;

(k) Make an IFQ landing other than directly to (or by) a registered buyer;

(l) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ card holder onboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating unless discard:

(1) Of halibut is required under 50 CFR part 301;

(2) Of sablefish is required under 50 CFR 672.20 or 675.20 or, in waters within the State of Alaska, discard of sablefish is required under laws of the State of Alaska; or

(3) Of halibut or sablefish is required under other provisions of this part;

(m) Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided at § 676.14(a) of this part;

(n) Sell or otherwise transfer catcher vessel IFQ except as provided at § 676.21 of this part;

(o) Operate a vessel as catcher vessel and a freezer vessel during the same fishing trip;

(p) Participate in a Western Alaska Community Development Quota program in violation of § 676.24 of this part, submit information that is false or inaccurate with a CDP application or request for an amendment, or exceed a CDQ as defined at § 676.11 of this part; and

(q) Violate any other provision of this part.

#### § 676.17 Facilitation of enforcement and monitoring.

In addition to the requirements of §§ 620.8 and 676.14 of this chapter, an IFQ landing must comply with the provisions described in this section.

(a) *Vessel clearance.* Any person that makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must be a registered buyer, obtain pre-landing written clearance of the vessel on which the IFQ halibut or IFQ sablefish are transported to the IFQ landing location, and provide an estimated weight of IFQ halibut and IFQ sablefish onboard to the clearing officer. For vessels obtaining clearance at a port in Alaska, clearance must be obtained prior to departing waters in or adjacent to the State of Alaska. For vessels obtaining clearance at a port in Washington or another state, the vessel must report to NMFS, Alaska Region, the estimated weight of the IFQ halibut and IFQ sablefish onboard and the intended date and time the vessel will obtain clearance at the port in Washington or another state. Such reports must be submitted to NMFS, Alaska Region, prior to departing waters in or adjacent to the State of Alaska, and in the manner prescribed by the registered buyer permit.

(1) Any person requesting a vessel clearance must have valid IFQ and registered buyer permits and one or more valid IFQ cards onboard that indicate that IFQ holdings are equal to or greater than all IFQ halibut and IFQ sablefish onboard, and must report the intended date, time, and location of IFQ landing.

(2) Any person granted a vessel clearance must submit an IFQ landing report, required under § 676.14 of this part, for all IFQ halibut, IFQ sablefish, and products thereof that are onboard the vessel at the first landing of any fish from the vessel.

(3) A vessel seeking clearance is subject to inspection of all fish, log books, permits, and other documents

onboard the vessel, at the discretion of the clearing officer.

(4) Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by NMFS enforcement officers at any of the following primary ports (geographic location descriptions reserved):

Akutan  
Bellingham  
Cordova  
Craig  
Dutch Harbor/Unalaska  
Excursion Inlet  
Homer  
Ketchikan  
King Cove  
Kodiak  
Pelican  
Petersburg  
St. Paul  
Sand Point  
Seward  
Sitka  
Yakutat

(b) *Overages.* Any person allocated IFQ must not harvest halibut or sablefish using fixed gear in any amount greater than the amount indicated under that person's current IFQ permit. Any person that harvests IFQ halibut or IFQ sablefish must hold sufficient unused IFQ for the harvest before beginning a fishing trip. Any IFQ halibut or IFQ sablefish that is harvested or landed in excess of a specified IFQ will be considered an "IFQ overage." In addition to any penalties that may be assessed for exceeding an IFQ, the Regional Director will deduct an amount equal to the overage from IFQ allocated in the year following determination of the overage. This overage adjustment to the annual IFQ allocation will be specific to each IFQ regulatory area for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an overage. In addition, the landed value of overages of the amount specified under the IFQ permit of 5 percent or more shall be subject to forfeiture. Unharvested amounts of IFQ in any year or IFQ regulatory area will not be reallocated.

#### § 676.18 Penalties.

Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson Act or Halibut Act or any regulation issued under the Magnuson Act or Halibut Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act or Halibut Act, to part 621 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to

permanent or temporary sanctions to QS and associated IFQ.

### Subpart C—Individual Fishing Quota Management Measures

#### § 676.20 Individual allocations.

The Regional Director shall annually divide the total allowable catch of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to 50 CFR part 301, 672.20 and 675.20, minus the CDQ reserve, among qualified halibut and sablefish quota shareholders, respectively.

(a) *Initial allocation of quota share (QS).* The Regional Director shall initially assign to qualified persons halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories.

(1) *Qualified person.* As used in this section, a "qualified person" means a "person," as defined in § 676.11 of this part, that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person is a qualified person also if (s)he leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease. Qualified persons, or their successors-in-interest, must exist at the time of their application for QS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his interest in the dissolved partnership or corporation. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining whether a person is a qualified person.

(i) A QS qualifying year is 1988, 1989, or 1990.

(ii) Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the U.S. Coast Guard abstract of title issued in respect of that vessel;

(B) A certificate of registration that is determinative as to vessel ownership; and

(C) A bill of sale.

(iii) Evidence of a vessel lease shall be limited to a written vessel lease agreement or a notarized statement from

the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect.

(iv) Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(v) As used in this section, a "legal landing of halibut or sablefish" means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. Federal catch reports are weekly production reports required under §§ 672.5(c) and 675.5(c) of this chapter. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining qualification to receive QS, nor in calculating initial QS.

(2) *Vessel categories.* Vessel categories include:

(i) Category A—freezer vessels of any length;

(ii) Category B—catcher vessels greater than 60 feet (18.3 meters) in length overall;

(iii) Category C—catcher vessels less than or equal to 60 feet (18.3 meters) in length overall for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) in length overall for halibut; and

(iv) Category D—catcher vessels that are less than or equal to 35 feet (10.7 meters) in length overall for halibut.

(b) *Calculation of initial QS.* The Regional Director shall calculate the halibut QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of halibut in each IPHC regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The Regional Director shall calculate the sablefish QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of sablefish

in each groundfish reporting area for any 5 years of the 6-year sablefish QS base period 1985 through 1990. The sum of all halibut QS for an IFQ regulatory area will be the halibut QS pool for that area. The sum of all sablefish QS for an IFQ regulatory area will be the sablefish QS pool for that area. Each initial QS calculation will be modified to accommodate the CDQ program prescribed at § 676.24 of this part.

(c) *Assignment of QS to vessel categories.* Each qualified person's QS will be assigned to a vessel category based on the length overall of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation and the product type landed. As used in this paragraph, "the most recent year of participation" means the most recent of four calendar years in which any groundfish or halibut were harvested using fixed gear, as follows: Calendar year 1988, 1989, or 1990; or calendar year 1991 prior to September 26, 1991.

(1) A qualified person's QS will be assigned to vessel category "A" if, at any time during his/her most recent year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(2) A qualified person's QS will be assigned to vessel category "B" if, at any time during his/her most recent year of participation, that person's vessel was greater than 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(3) A qualified person's sablefish QS will be assigned to vessel category "C" if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(4) A qualified person's halibut QS will be assigned to vessel category "C" if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters), but greater than 35 feet (10.7 meters), in length overall and did not process any groundfish or halibut caught with fixed gear.

(5) A qualified person's halibut QS will be assigned to vessel category "D" if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 35 feet (10.7 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(6) A qualified person's QS will be assigned to each applicable vessel category in proportion to the landings of



halibut or sablefish made by that person if, at any time during their most recent year of participation, that person used more than one vessel in different categories.

(7) A qualified person's QS for both species will be assigned to the vessel category in which groundfish were landed in the most recent year of participation if, at any time during that year, that person landed halibut in one vessel category and sablefish in a different vessel category.

(8) A qualified person's halibut QS will be assigned to the vessel category in which groundfish were landed, or vessel categories in proportion to the total fixed gear landings of groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of halibut.

(9) A qualified person's sablefish QS will be assigned to the vessel category in which halibut and groundfish were landed, or vessel categories in proportion to the total fixed gear landings of halibut and groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of sablefish.

(d) *Application for initial QS.* Upon request, the Regional Director shall make available to any person an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current state and Federal confidentiality rules, and that are available to the Regional Director at the time of the request. An application period of no less than 180 days will be specified by notice in the Federal Register and other information sources that the Regional Director deems appropriate. Complete applications received by the Regional Director will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(1) Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Director. If additional data presented in an application are not consistent with the data compiled by the Regional Director, the applicant will be notified of insufficient documentation. The applicant will have 90 days to submit corroborating documents (as specified at paragraph (a)(1) of this section) in support of his/her application or to resubmit a revised application. All

applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to a notice of insufficient documentation.

(2) Uncontested data in applications will be approved by the Regional Director. Based on these data, the Regional Director will calculate each applicant's initial halibut and sablefish QS, as provided at paragraph (b) of this section, for each IFQ regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an IFQ regulatory area to the respective QS pool for that area.

(3) Any applicant's catch history or other data that are contested by the Regional Director or another applicant will prevent approval of QS amounts that would result from the contested data until discrepancies are resolved. Amounts of QS will not be added to the QS pool for any IFQ regulatory area until they are approved by the Regional Director.

(e) *Appeal of initial allocation.* Initial action on allocation of QS must be appealed, pursuant to § 676.25 of this part, within 90 days of the date any allocation is issued or denied following the process described in paragraph (d) of this section.

(f) *Annual allocation of IFQ.* The Regional Director shall assign halibut or sablefish IFQs to each person holding approved halibut or sablefish QS, respectively, up to the limits prescribed at § 676.22 (e) and (f) of this part. Each assigned IFQ will be specific to an IFQ regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified IFQ regulatory area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Director within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violating rules of this part.

(1) The annual allocation of IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the total allowable catch of halibut or sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska Community Development Quota Program) and that person's QS divided by the QS pool for that area. Overages will be subtracted from a person's IFQ pursuant to § 676.17 of this part. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = \left( \frac{\text{fixed gear TAC}_a - \text{CDQ reserve}_a}{\text{QS}_{pa} / \text{QS pool}_a} \right) \times \text{overage of IFQ}_{pa}$$

(2) For purposes of calculating IFQs for any fishing year, the amount of a person's QS and the amount of the QS pool for any IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS, as of noon, Alaska local time, on January 31 of that year.

(3) The Regional Director shall issue to each QS holder, pursuant to § 676.13 of this part, an IFQ permit accompanied by a statement specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of that year. Such IFQ permits will be sent by certified mail to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

(g) Quota shares allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the "takings" provision of the Fifth Amendment of the U.S. Constitution. Rather, such quota shares or permits represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law.

#### § 676.21 Transfer of QS and IFQ.

Any person that is allocated QS or IFQ, either initially or by subsequent approved transfer, may sell, lease, or otherwise transfer all or part of their QS or IFQ to another person only in accordance with the transfer restrictions and procedures described in this section.

(a) The QS and IFQ assigned to any vessel category is not transferrable to any other vessel category.

(b) The QS assigned to any catcher vessel category may be transferred only to individuals who are U.S. citizens and IFQ crew members or to persons that receive an initial allocation of catcher vessel QS, except that only individuals may receive transferred catcher vessel QS for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° west longitude. An initial allocation of catcher vessel QS to an individual may be transferred to a solely-owned corporation that is owned by the same individual.

(c) The Regional Director must be notified of any transfer of QS or IFQ by inheritance, court order, security agreement, or other operation of law. Any person that receives QS in this

manner may not use the IFQ resulting from it to harvest halibut or sablefish with fixed gear without first obtaining the approval of the Regional Director under paragraph (e) of this section. Any person that receives QS in this manner may apply to transfer QS to an eligible applicant subject to the transfer restrictions and procedures described in this section.

(d) Transfers of catcher vessel QS approved by the Regional Director cannot be made subject to a lease or any condition of repossession or resale by the person transferring QS except as provided for leasing in paragraph (f) of this section or by court order or as part of a security agreement. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(e) *Transfer procedure.* The transfer of QS or IFQ shall not be effective for purposes of harvesting halibut or sablefish with fixed gear until a transfer application is approved by the Regional Director. The Regional Director shall provide a transfer application form to any person on request. Approved transfers will change the affected persons' QS or IFQ accounts on the date of approval, and the persons applying for transfer will be given notice of the transfer approval, and IFQ permits if necessary, by mail posted on the date of approval unless another communication mode is requested on the transfer application. Applicants whose transfers were not approved will be similarly informed of the reason for disapproval.

(1) *Transfer approval criteria.* A transfer of QS or IFQ for purposes of harvesting halibut or sablefish with fixed gear will not be approved until the Regional Director has determined that:

- (i) The person who is applying to transfer QS or IFQ is the same person who received the QS or IFQ either by initial allocation or subsequent approved transfer, or is a person who legally acquired the QS through inheritance, court order, security agreement, or other operation of law;
- (ii) The person applying to receive transferred QS or IFQ has a transfer eligibility application, containing currently accurate information, approved by the Regional Director;
- (iii) The proposed transfer will not cause the person who would receive QS to exceed the use limits specified at § 676.22 of this part;

(iv) Both persons have their notarized signatures on the transfer application form, unless the transfer is by inheritance, court order, security agreement, or other operation of law;

(v) There are no fines, civil penalties, or other payments due and owing or outstanding permit sanctions resulting from Federal fishery violations involving either person;

(vi) The person applying to receive transferred QS or IFQ currently exists; and

(vii) Other pertinent information requested on the transfer application form has been supplied to the satisfaction of the Regional Director.

(2) *Transfer eligibility application.* All persons who apply to receive QS or IFQ by transfer must have a transfer eligibility application, containing currently accurate information, approved by the Regional Director. The Regional Director shall provide a transfer eligibility application form to any person on request. Applicants may request either an Individual IFQ Crew Member Eligibility Application or a Corporate/Partnership or Other Entity Eligibility Application. Persons who are not individuals must resubmit a transfer eligibility application if there is a change in the corporation or partnership as described in § 676.22 of this part. Approved transfer eligibility applicants will be informed by certified mail of their transfer eligibility. A disapproved transfer eligibility application will be returned to the applicant with an explanation of why the application was disapproved. Reasons for disapproval of a transfer eligibility application may include, but are not limited to:

- (i) Fewer than 150 days of experience working as an IFQ crew member;
- (ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.11 of this part;
- (iii) An incomplete eligibility application; or
- (iv) Fines, civil penalties, or other payments due and owing or outstanding permit sanctions resulting from Federal fishery violations.

(f) *Leasing QS (applicable until January 2, 1997).* A person may transfer by lease no more than 10 percent of his/her total catcher vessel QS for any IFQ regulatory area to one or more other persons for any fishing year. A QS lease shall not have effect until approved by the Regional Director. The Regional Director shall change QS or IFQ accounts affected by an approved QS lease transfer and issue any necessary IFQ permits. Approved QS leases must comply with all transfer requirements specified in this section. Applications to transfer by lease QS that is under sanction will not be approved. All lease transfers will cease to have effect on December 31 of the year for which they are approved.

#### § 676.22 Limitations on use of QS and IFQ.

(a) The QS or IFQ specified for one IFQ regulatory area and one vessel category must not be used in a different IFQ regulatory area or vessel category, except as provided in paragraph (i)(3) of this section.

(b) Halibut IFQ must be used only to harvest halibut with fishing gear authorized at 50 CFR part 301. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the Gulf of Alaska.

(c) Any individual who harvests halibut or sablefish with fixed gear must:

- (1) Have a valid IFQ card;
- (2) Be aboard the vessel at all times during fishing operations; and
- (3) Sign any required fish ticket or IFQ landing report for the amount of halibut or sablefish that will be debited against the IFQ associated with their IFQ card.

(d) The requirement of paragraph (c) of this section for an individual IFQ card holder to be onboard during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or IFQ sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use.* No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent (0.01) of the combined total sablefish QS for the Gulf of Alaska and Bering Sea and Aleutian Islands IFQ regulatory areas, unless the amount in excess of 1 percent (0.01) was received in the initial allocation of QS. In the IFQ regulatory area east of 140° west longitude, no person, individually or collectively, may use more than 1 percent (0.01) of the total amount of QS for this area, unless the amount in excess of 1 percent (0.01) was received in the initial allocation of QS.

(f) *Halibut QS use.* Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

- (1) One percent (0.01) of the total amount of halibut QS for IFQ regulatory area 2C;
- (2) One-half percent (0.005) of the total amount of halibut QS for IFQ regulatory areas 2C, 3A, and 3B, combined; and
- (3) One-half percent (0.005) of the total amount of halibut QS for IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E, combined.

(g) If transferred QS would result in an IFQ that is greater than the use limits specified in paragraphs (e) and (f) of this section, then any necessary adjustment to the IFQ account based on such QS will be issued for only the maximum IFQ allowed under these limits.

(h) *Vessel limitations.* (1) No vessel may be used, during any fishing year, to harvest more than one-half percent (0.005) of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that, in IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent (0.01) of the halibut catch limit for this area; and

(2) No vessel may be used, during any fishing year, to harvest more than 1 percent (0.01) of the combined fixed gear TAC of sablefish for the Gulf of Alaska and Bering Sea and Aleutian Islands IFQ regulatory areas, except that, in the IFQ regulatory area east of 140° west longitude, no vessel may be used to harvest more than 1 percent (0.01) of the fixed gear TAC of sablefish for this area.

(3) A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

(i) *Use of catcher vessel IFQ.* In addition to the requirements of paragraph (c) of this section, catcher vessel IFQ cards must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who receives an initial allocation of catcher vessel QS does not have to be onboard and sign IFQ landing reports if that individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of catcher vessel QS for halibut in IFQ regulatory area 2C or for sablefish QS in the IFQ regulatory area east of 140° west longitude, and this exemption is not transferable.

(3) Catcher vessel IFQ may be used on a freezer vessel, provided no frozen or otherwise processed fish products are onboard at any time during a fishing trip on which catcher vessel IFQ is being used. A catcher vessel may not land any IFQ species as frozen or otherwise processed product. Processing of fish on

the same vessel that harvested those fish using catcher vessel QS is prohibited.

(j) *Use of catcher vessel IFQ by corporations and partnerships.* A corporation or partnership that receives an initial allocation of catcher vessel QS may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. This provision is not transferable and does not apply to catcher vessel QS for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° west longitude that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 676.21(b) of this part and be used pursuant to paragraphs (c) and (i) of this section.

(1) A corporation or partnership, except for a publicly-held corporation, that receives an initial allocation of catcher vessel QS loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph, "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Director must be notified of a change in a corporation or partnership as defined in this paragraph within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph, is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) Catcher vessel QS and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 676.21 of this part, before it may be used at any time after the effective date of the change.

#### § 676.23 IFQ fishing season.

(a) The fishing period(s) for IFQ halibut are established by the IPHC and are specified at 50 CFR part 301. Catches of halibut by fixed gear at times other than during the specified fishing periods must be treated as prohibited

species as prescribed at §§ 672.20(e) and 675.20(c) of this chapter.

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted at any time during the period from 00:01 Alaska Local Time on March 1 through 24:00 Alaska Local Time on November 30. Catches of sablefish by fixed gear during other periods may be retained up to the directed fishing standards specified at §§ 672.20(g) and 675.20(h) of this chapter if an individual who holds a valid IFQ card and unused IFQ is onboard when the catch is made. Catches of sablefish in excess of the directed fishing standards and catches made without IFQ must be treated in the same manner as prohibited species.

#### § 676.24 Western Alaska Community Development Quota Program.

(a) *Halibut CDQ Program.* The Secretary will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in this paragraph for use as a CDQ. Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible western Alaska community in accordance with a CDP approved by the Governor in consultation with the Council and approved by the Secretary. The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each area:

(1) In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nautical miles from the point where the boundary of the IPHC regulatory area intersects land.

(2) In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in IPHC regulatory area 4C.

(3) In IPHC regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(4) In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC regulatory area 4E. A trip limit of 6,000 pounds (2.7 metric tons) will apply to halibut CDQ harvesting in IPHC regulatory area 4E,

(b) *Sablefish CDQ Program.* In the notices of proposed and final harvest limit specifications required under § 675.20(a) of this chapter, the Secretary will specify 20 percent of the fixed gear allocation of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under § 675.24(c) of this chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of specific western Alaska communities in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. The Secretary will allocate no more than 12 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

(c) *State of Alaska CDQ responsibilities.* Prior to granting approval of a CDP recommended by the Governor, the Secretary shall find that the Governor approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. The hearing(s) on the CDP do not have to be held on the actual documents submitted to the Governor under paragraph (d) of this section. Such hearing(s) must cover the substance and content of the proposed CDP in such a manner that the general public and the affected parties have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notice of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notice of the hearing, all materials in possession of the State of Alaska that are pertinent to the hearing(s) and that may be released under State and Federal confidentiality laws. The Governor must include a transcript or summary of the public hearing(s) with the Governor's recommendations to the Secretary in accordance with this section. At the same time this transcript is submitted to the Secretary, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of Secretarial review under paragraph (e) of this section.

(d) *CDP application.* The Governor, after consultation with the Council, shall include in his written findings to the Secretary recommending approval of a sablefish/halibut CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss

the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the criteria set out in paragraph (f)(2) of this section. Applications for a CDP must include the following information:

(1) *Community development information.* Community development information includes:

- (i) The goals and objectives of the CDP;
- (ii) The allocation of sablefish or halibut CDQ requested for each subarea defined at § 675.2 of this chapter and for each IPHC regulatory area;
- (iii) The length of time the CDQ allocation will be necessary to achieve the goals and objectives of the CDP, including a project schedule with measurable milestones for determining progress;
- (iv) The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies);
- (v) Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate;

(vi) Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources;

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations;

(viii) A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries; and

(ix) A description of short-term and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest the CDQ allocation;

(ii) Description of the target market for sale of products and competition existing or known to be developing in the target market;

(iii) Description of business relationships between all business

partners (i.e., persons who have a financial interest in the CDQ project), if any, including arrangements for management, audit control, and a plan to prevent quota overages;

(iv) Description of profit sharing arrangements;

(v) Description of all funding and financing plans;

(vi) Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties;

(vii) A budget for implementing the CDP;

(viii) A list of all capital equipment;

(ix) A cash flow and break-even analysis; and

(x) A balance sheet and income statement, including profit, loss, and return on investment on all business ventures within the previous 12 months by the applicant and/or the managing organization.

(3) *Statement of managing organization's qualifications.*

(i) Statement of the managing organization's qualifications includes information regarding its management structure and key personnel, such as resumes and references;

(ii) Description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages; For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and would meet the following criteria:

(A) Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community;

(B) Documentation of a legal relationship between the CDP applicant and the managing organization that clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application (e.g., proven business experience as shown by a balance and income statement, including profit, loss, and the return on investment on all business ventures within the previous 12 months by the management organization).

(e) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the community

eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary shall then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the community eligibility conditions and evaluation criteria under paragraph (f) of this section and other applicable law, including the Secretary's reasons for approval. Publication of the decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP, and the availability of the findings will appear in the Federal Register. The Secretary will allocate no more than 12 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A community may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per community will be accepted.

(2) If the Secretary finds that the Governor's recommendations for halibut and sablefish CDQ allocations are not consistent with the criteria set forth in these regulations and disapproves the Governor's recommendations, the Secretary shall so advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the Federal Register. The CDP applicant may submit a revised CDP to the Governor for submission to the Secretary. Review by the Secretary of a revised CDP application will be in accordance with the provisions set forth in this section.

(f) *Evaluation criteria.* The Secretary will approve the Governor's recommendations for halibut and sablefish CDPs if the Secretary finds the CDPs are consistent with the requirements of this part, including the following:

(1) Each CDP application is submitted in compliance with the application procedures described in paragraph (d) of this section;

(2) Prior to approval of a CDP recommended by the Governor, the Secretary will review the Governor's findings as to how each community(ies) meet the following criteria for an eligible community in paragraphs (f)(2)(i), (ii), (iii), and (iv) of this section. The Secretary has determined that the communities listed in Table 1 of this section meet these criteria; however, communities that may be eligible to submit CDPs and receive halibut or sablefish CDQs are not limited to those listed in this table. For a community to

be eligible, it must meet the following criteria:

(i) The community must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering sea. A community is not eligible if it is located on the coast of the Chukchi Sea or the Gulf of Alaska even if it is within 50 nautical miles of the baseline of the Bering Sea;

(ii) The community must be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) to be a native village;

(iii) The residents of the community must conduct more than one-half of their current commercial or subsistence fishing effort in the waters surrounding the community; and

(iv) The community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The communities of Unalaska and Akutan are excluded under this provision;

(3) Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP;

(4) Each CDP application demonstrates that its managing organization can effectively prevent exceeding the CDQ allocation;

(5) The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDQ application, and have the ability to successfully meet the project milestones and schedule;

(ii) The managing organization has an adequate budget for implementing the CDP, and that the CDP is likely to be successful;

(iii) A qualified applicant has submitted the CDP application and that the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community; and

(iv) That the following factors have been considered:

(A) The number of individuals from applicant communities who will be

employed under the CDP, the nature of their work, and career advancement;

(B) The number and percentage of low-income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP;

(C) The number of communities cooperating in the application;

(D) The relative benefits to be derived by participating communities and the specific plans for developing a self-sustained fisheries economy; and

(E) The success or failure of the applicant and the managing organization in the execution of a prior CDP (e.g., exceeding a CDQ allocation or any other related violation may be considered a failure and may result in partially or fully precluding a CDP from a future CDQ allocation);

(6) For purposes of this paragraph (f), "qualified applicant" means:

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities) that is making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDQ project, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application;

(7) For the purpose of this paragraph (f), "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address; and

(8) If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(g) *Monitoring of CDPs.* (1) Approved CDPs for halibut and sablefish are required to submit annual reports to the Governor by June 30 of the year following CDQ allocation. At the conclusion of a CDP, a final report will be required to be submitted to the Governor by June 30 of the final year of CDQ allocation. Annual reports for CDPs will include information describing how the CDP has met its

milestones, goals, and objectives. The Governor will submit an annual report to the Secretary on the final status of all concluding CDPs, and recommend whether allocations should be continued for those CDPs that are not yet concluded. The Secretary must notify the Governor in writing of receipt of the Governor's annual report, accepting or rejecting the annual report and the Governor's recommendations on the continuance of CDPs. If the Secretary rejects the Governor's annual report, the Secretary will return the Governor's annual report for revision and resubmission to the Secretary.

(2) If an applicant requests an increase in an existing halibut or sablefish CDQ allocation, the applicant must submit a new CDP application for review by the Governor and approval by the Secretary as described in paragraphs (d) and (e) of this section.

(3) Amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and the Secretary before any change in a CDP can occur. The Governor may recommend to the Secretary that the request for an amendment be approved. The Secretary may notify the Governor in writing of approval or disapproval of the amendment. The Governor's recommendation for approval of an amendment will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If the Secretary determines that the CDP, if changed, would no longer meet the criteria under paragraph (f) of this section, the Secretary shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, amendments are defined as substantial changes in a CDP, including, but not limited to, the following:

(A) Any change in the relationships among the business partners;

(B) Any change in the profit sharing arrangements among the business partners, or any change to the budget for the CDP; or

(C) Any change in management structure of the project, including any change in audit procedures or control.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) Description of the proposed change, including specific pages and text of the CDP that will be changed if the amendment is approved by the Secretary; and

(B) Explanation of why the change is necessary and appropriate. The explanation should identify which

findings, if any, made by the Secretary in approving the CDP may need to be modified if the amendment is approved.

(h) *Suspension or termination of a CDP.* (1) The Secretary may, at any time, partially suspend, suspend, or terminate any CDP, upon written recommendation of the Governor setting out his reasons, that the CDP recipient is not complying with the regulations of this part. After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination of a CDP, the Secretary will notify the Governor in writing of approval or disapproval of the Governor's recommendation. In the event of approval of the Governor's recommendation, the Secretary will publish an announcement in the *Federal Register* that the CDP has been partially suspended, suspended, or terminated along with reasons therefor.

(2) The Secretary also may partially suspend, suspend, or terminate any CDP at any time if the Secretary finds a recipient of a CDQ allocation pursuant to the CDP is not complying with the regulations of this part or other regulations or provisions of the Magnuson Act or other applicable law or if the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area is amended. Publication of suspension or termination will appear in the *Federal Register* along with the reasons therefor.

(3) The annual report for multi-year CDPs, which is required under paragraph (g) of this section, will be used by the Governor to review each CDP to determine if the CDP and CDQ allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to the Secretary that the CDP be partially suspended, suspended, or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons therefor, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation. The Secretary will publish a notice in the *Federal Register* that the CDP has been suspended or, with reasons therefor, terminated.

(i) *Compensation for CDQ allocations.*

(1) The Regional Director will compensate persons that receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, and 3B. This compensation of halibut QS from areas 2C, 3A, and 3B will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

(2) The Regional Director will compensate persons that receive a reduced sablefish QS in any Bering Sea and Aleutian Islands IFQ regulatory area because of the sablefish CDQ program by taking sablefish QS from the IFQ regulatory areas of the Gulf of Alaska and allocating it in proportion to the loss suffered by persons in the BSAI area. Such additional compensation of sablefish QS will be allocated in proportion to the amount of sablefish QS foregone due to the CDQ allocation authorized by this section.

(3) Compensation of halibut and sablefish QS foregone due to the CDQ program will occur only in the first year of fishing under the IFQ program, and determination of persons and the amounts to be compensated will be based on the QS pool for all areas as of noon, Alaska local time, on January 31 of the first year of fishing under the IFQ program.

(j) *Limitations on use of CDQ.* (1) Fishing for CDQ halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in 50 CFR part 301. Fishing for CDQ sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ directed fishing may occur only during the IFQ fishing season specified in § 676.23 of this part.

(2) *CDQ permits.* The Regional Director will issue a CDQ permit to the managing organization responsible for carrying out an approved CDQ project. A CDQ permit will authorize the managing organization identified on the permit to harvest halibut or sablefish with fixed gear from a specified area. A copy of the CDQ permit must be carried on any fishing vessel operated by or for the managing organization, and be made available for inspection by an authorized officer. Each CDQ permit will be non-transferable and will be effective for the duration of the CDQ project or until revoked, suspended, or modified.

(3) *CDQ cards.* The Regional Director will issue CDQ cards to all individuals named on an approved CDP application.

Each CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut or sablefish for debit against its CDQ allocation.

(4) No person may alter, erase, or mutilate any CDQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated will be invalid.

(5) All landings of halibut or sablefish harvested under an approved CDQ project must be landed by a person with a valid CDQ card to a person with a valid registered buyer permit, and reported as prescribed in § 676.14 of this part. Docksides sales and outside landings of halibut and sablefish under an approved CDQ program also may be made in compliance with § 676.14(d) of this part.

**TABLE 1 to § 676.24—Communities Initially Determined To Be Eligible To Apply for Community Development Quotas**

*Aleutian Region*

1. Atka
2. False Pass
3. Nelson Lagoon
4. Nikolski
5. St. George
6. St. Paul

*Bering Strait*

1. Brevig Mission
2. Diomedes/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

*Bristol Bay*

1. Aleknagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek

11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

*Southwest Coastal Lowlands*

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

**§ 676.25 Determinations and appeals. [Reserved]**

[FR Doc. 93-27128 Filed 11-8-93; 8:45 am] BILLING CODE 3510-22-P

**National Oceanic and Atmospheric Administration**

**50 CFR Part 675**

[Docket No. 921185-3021; I.D. 110493A]

**Groundfish of the Bering Sea and Aleutian Islands Area**

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

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that incidental catches of Pacific cod be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catch (TAC) for Pacific cod in the BSAI has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), November 7, 1993, until 12 midnight A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a), the final 1993 initial specifications (58 FR 8703, February 17, 1993) and subsequent reserve release (58 FR 14172, March 16, 1993) established the TAC specification for Pacific cod in the BSAI as 164,500 metric tons. The directed fishery for Pacific cod was closed on May 11, 1993 (58 FR 28522, May 14, 1993). The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Pacific cod in the BSAI has been reached. Therefore, NMFS is requiring that further catches of Pacific cod in the BSAI be treated as a prohibited species in accordance with § 675.20(c), and is prohibiting its retention effective from 12 noon, A.l.t., November 7, 1993, until 12 midnight, A.l.t., December 31, 1993.

**Classification**

This action is taken under 50 CFR 675.20.

**List of Subjects in CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

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

Dated: November 4, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-27514 Filed 11-4-93; 12:22 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 58, No. 215

Tuesday, November 9, 1993

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 92

[Docket No. 92-129-1]

### Ruminants and Horses Imported From Canada; Importation of Wild Ruminants and Wild Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** We are proposing to amend the animal import regulations to require that all ruminants imported from Canada for immediate slaughter be handled in a manner that now is required only for cattle, sheep, and goats imported from Canada for immediate slaughter. We believe this action is necessary to help prevent the spread of livestock diseases into the United States. We are also proposing three additional amendments. The first would allow horses, cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. The second would allow horses that are required to be tested for equine infectious anemia before being imported from Canada to be tested within 365 days before importation, rather than 180 days. The third would allow zoological parks approved to receive wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists to dispose of manure and other animal wastes outside the zoological park after the animal has been in the park for 1 year. We believe these actions are warranted because they would relieve regulatory burdens without presenting a significant risk of introducing livestock diseases into the United States.

**DATES:** Consideration will be given only to comments received on or before January 10, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief,

Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-129-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 92 (referred to below as the regulations) concern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases of livestock and poultry.

##### Testing of Horses for Equine Infectious Anemia

Sections 92.315 through 92.318 of the regulations concern the importation of horses into the United States from Canada. The regulations in § 92.317 require that all horses from Canada, except horses imported for immediate slaughter, be accompanied by a certificate that must, among other things, include evidence of a negative test for equine infectious anemia (EIA). Blood samples for the EIA test must be drawn within 180 days preceding the horses' importation into the United States.

The Department of Agriculture of the Government of Canada has requested that we allow blood samples for the EIA test to be drawn within 365 days preceding the horses' importation into the United States. The incidence of EIA in Canada is minimal (less than 1 percent). We therefore believe that extending the time during which testing for EIA may be done to 365 days prior to importation would not increase the risk of spreading EIA to U.S. horses, and would reduce the regulatory burden on

importers of horses from Canada. The 365-day time limit would also make our regulations consistent with most States, which require that horses be tested for EIA within 365 days preceding the horses' movement into the State.

##### Exemption of Slaughter Horses From Certificate Requirement

According to the regulations in § 92.317, horses imported from Canada for immediate slaughter do not need to be accompanied by a certificate showing results from the test for equine infectious anemia, if they are accompanied by a certificate stating that: (1) The horses were inspected within 30 days prior to shipment to the United States and were found free of evidence of communicable disease; and (2) that, as far as can be determined, the horses have not been exposed to any communicable disease within 60 days prior to shipment to the United States.

We are proposing to allow horses imported from Canada for immediate slaughter to be imported without a certificate. According to the regulations in § 92.316, horses imported from Canada for immediate slaughter must be consigned directly from the port of entry to a recognized slaughtering establishment, and there be slaughtered within 2 weeks. Hence, they do not come in contact with any U.S. livestock except other slaughter animals. In addition, the regulations in § 92.306 require that all horses, including horses imported for immediate slaughter, be inspected at the port of entry. If, upon such inspection, a horse is not found to be free from communicable disease, or is found to have been exposed to communicable disease within 60 days prior to such inspection, the horse is refused entry into the United States. We believe that importation of horses from Canada for immediate slaughter presents no significant risk of introducing livestock diseases into the United States, and that the certificate requirement constitutes an unnecessary burden on importers.

We propose to clarify what we mean in § 92.316 by "consigned from the port of entry directly to a recognized slaughtering establishment" by adding a sentence to that section to read as follows: As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if



moved in any other manner. Requiring that the horses be moved "directly," as defined above, appears necessary to minimize the risk of the horses spreading disease to animals in the United States, should any of the imported horses have an infectious disease.

#### **Exemption of Slaughter Ruminants From Certificate Requirement**

Sections 92.417 through 92.421 of the regulations concern the importation of ruminants into the United States from Canada. These sections require that certain ruminants (cattle, sheep, and goats) be accompanied by a certificate. For cattle, the certificate must state that: (1) The cattle have been inspected and found to be free from any evidence of communicable disease, and (2) that, as far as can be determined, the cattle have not been exposed to any communicable disease within 60 days prior to importation. For all cattle imported from Canada, except cattle imported for immediate slaughter, the certificate must also indicate the cattle's freedom from tuberculosis and brucellosis.

In addition, all sheep and goats imported from Canada, except sheep and goats imported for immediate slaughter, must be accompanied by a certificate that attests to the animals' freedom from evidence of scrapie and any other communicable disease. Sheep and goats imported from Canada for immediate slaughter are exempt from the above certification if they are accompanied by a certificate stating: (1) That the sheep and goats were inspected within 30 days prior to importation into the United States and were found free of evidence of communicable disease, and (2) that, as far as can be determined, the sheep and goats have not been exposed to any communicable disease within 60 days prior to importation into the United States.

As with horses imported from Canada for immediate slaughter, we are proposing to allow ruminants imported from Canada for immediate slaughter to be imported without a certificate. According to the regulations in § 92.420, cattle, sheep, and goats imported from Canada for immediate slaughter must be consigned directly from the port of entry to a recognized slaughtering establishment, and there be slaughtered within 2 weeks. Therefore, they do not come in contact with any U.S. livestock except slaughter animals. In addition, the regulations in § 92.408 require that all ruminants, including ruminants imported for immediate slaughter, be inspected at the port of entry. If, upon such inspection, a ruminant is not found to be free from communicable

disease, or is found to have been exposed to communicable disease within 60 days prior to such inspection, the ruminant is refused entry into the United States. We believe that importation of cattle, sheep, and goats from Canada for immediate slaughter presents no significant risk of introducing livestock diseases into the United States, and that the certificate requirement constitutes an unnecessary burden.

#### **Other Ruminants Shipped to Slaughter**

The regulations in § 92.420 (described above) minimize the risk of introducing livestock diseases into the United States by ensuring that cattle, sheep, and goats imported from Canada for immediate slaughter are not diverted from slaughter and are not commingled with other livestock. Although § 92.420 is titled "Ruminants from Canada for immediate slaughter," only cattle, sheep, and goats are governed by its provisions. However, other ruminants (such as bison, deer, antelopes, camels, llamas, and giraffes) could carry animal diseases that would threaten cattle and other U.S. livestock.

Accordingly, we believe that the conditions in § 92.420 should be made to apply to all ruminants imported from Canada for immediate slaughter, not just to cattle, sheep, and goats. This action would ensure that they are handled in such a way as to minimize any disease risk to U.S. livestock. Therefore, we propose to revise § 92.420 of the regulations to include all ruminants.

#### **Disposal of Manure and Other Animal Wastes**

The regulations in §§ 92.404(c) and 92.504(c) provide for the importation of wild ruminants and wild swine, respectively, from countries where foot-and-mouth disease or rinderpest exists only if the animals are intended for exhibition purposes in a zoological park previously approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) and only if an agreement is entered into with APHIS for the maintenance and handling of such animals to prevent the introduction and dissemination of communicable disease. The zoological park must, among other things, have in place provisions for the disposal of manure, other wastes, and dead ruminants and swine within the zoological park. We are proposing to revise this requirement by stipulating that the manure and other animal wastes need only be disposed of within the park for the first year after the animal arrives in the park, provided the

animal shows no sign of any illness at the end of that year.

Disposal of manure and other animal wastes within the zoological park is necessary when the manure or other animal wastes present some risk of disseminating exotic diseases from the zoological park. However, the regulations require that wild ruminants and wild swine imported from countries where foot-and-mouth disease or rinderpest exists be quarantined for 60 days in the country of origin, and again, upon arrival in the United States, for 30 days at a U.S. Department of Agriculture facility, to determine whether the animals show any evidence of rinderpest, foot-and-mouth disease, or other communicable disease. This constitutes 90 days of isolation, after which the animals pose a minimal risk of being affected with exotic communicable diseases.

However, because the wild ruminants and wild swine are often exotic species, which have not been researched as extensively as domesticated species, we propose to require that manure and other wastes of the animals be disposed of within the zoological park for 1 year after the animals enter the park. After that time, we believe that disposal of manure and other animal wastes within the zoological park is unnecessary, provided an APHIS veterinarian has determined that the animal shows no signs of any illness. If the animal does show signs of any illness at the end of the first year, an APHIS veterinarian would investigate the illness at that time and determine whether the animal's manure and other wastes may safely be disposed of outside the zoological park. The veterinarian's determination would be made on a case-by-case basis, and would take into consideration whether the illness is communicable and whether it presents a health risk to other animals or livestock.

Space is often very limited in zoological parks. This proposed revision would allow a zoological park, after 1 year, to sell the manure or utilize in some other way the space that had been reserved for the disposal of the manure and other animal wastes.

#### **Miscellaneous**

Current §§ 92.404(c) and 92.504(c) require that, in order to receive wild ruminants or wild swine, respectively, from a country where foot-and-mouth disease or rinderpest exists, a zoological park must enter into an agreement with APHIS that states, among other things, that "[t]he animals will be quarantined for not less than 30 days in the Department's Animal Quarantine Station in Clifton, New Jersey." The

Animal Quarantine Station in Clifton, NJ, is no longer in operation, and the animal import center in Newburgh, NY, is being used instead. We are therefore proposing to update the regulations by removing the words "Animal Quarantine Station in Clifton, New Jersey" and replacing them with the words "Animal Import Center in Newburgh, New York."

We also propose to clarify what we mean in § 92.518 by "consigned from the port of entry directly to a recognized slaughtering establishment" by adding a sentence to that section to read as follows: As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner. Requiring that the swine be moved "directly," as defined above, appears necessary to minimize the risk of the swine spreading disease to animals in the United States, should any of the imported swine have an infectious disease.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would require that all ruminants (not just cattle, sheep, and goats) imported into the United States from Canada for immediate slaughter be consigned from the port of entry directly to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. APHIS does not expect that the imposition of these requirements would increase or decrease the number of ruminants exported from Canada for immediate slaughter. The proposed regulations would not have a significant economic impact on importers, slaughtering houses, or other entities, as the ruminants that would be affected, primarily bison and deer, normally go directly from the port of entry to

slaughter and are slaughtered within 2 weeks. However, this proposed action is necessary to ensure that bison, deer, and other ruminants imported for immediate slaughter are always handled in this way.

This proposed rule would also: (1) Allow horses, cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate; and (2) allow horses that are required to be tested for EIA before being imported from Canada to be tested within 365 days before importation rather than 180 days. These proposed actions would facilitate the importation of horses and ruminants from Canada for immediate slaughter and other horses from Canada that require an EIA test, thereby saving importers some time. It would also save importers the cost of acquiring a certificate for horses, cattle, sheep, and goats. However, this savings constitutes an insignificant portion of the cost of importing these animals.

Finally, this proposed rule would require that zoological parks approved to receive wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists dispose of manure and other animal wastes within the zoological park only for the first year after the animal enters the zoological park. This proposed amendment would relieve some burden on approximately 30 zoos that import wild ruminants or wild swine from countries where foot-and-mouth disease or rinderpest exists. Each zoo may save an estimated \$100 to \$1000 each year in disposal costs, depending on the number of affected animals in the park.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

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

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

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

Accordingly, 9 CFR part 92 would be amended as follows:

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

1. The authority citation for part 92 would continue to read as follows:

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

2. Section 92.316 would be amended by adding a second and third sentence to read as follows:

#### § 92.316 Horses from Canada for immediate slaughter.

\* \* \* Such horse shall be inspected at the port of entry and otherwise handled in accordance with § 92.306. As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

#### § 92.317 [Amended]

3. Section 92.317 would be amended as follows:

a. The beginning of paragraph (a) would be amended by removing "Except as provided in paragraph (c) of this section," and adding the phrase "Except for horses imported for slaughter in accordance with § 92.316," in its place.

b. In paragraph (a), the number "180" would be removed and the number "365" would be added in its place.

c. Paragraph (c) would be removed.

#### § 92.404 [Amended]

4. Section 92.404 would be amended as follows:

a. In paragraph (c)(1), second sentence, the reference "(c)(3)" would be removed and "(c)(4)" would be added in its place.

b. Paragraph (c)(3) would be redesignated as paragraph (c)(4).

c. A new paragraph (c)(3) would be added to read as set forth below.

d. In paragraph (c)(4), paragraph 4 of the agreement, the phrase "Animal Quarantine Station in Clifton, New Jersey" would be removed and the phrase "Animal Import Center in Newburgh, New York" would be added in its place.

**§ 92.404 Import permits for ruminants and for ruminant specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.**

\* \* \* \* \*

(c) \* \* \*  
(3) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date a ruminant enters the park. If an APHIS veterinarian determines that a ruminant shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that a ruminant does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the ruminant's manure and other wastes may safely be disposed of outside the zoological park.

\* \* \* \* \*

**§ 92.418 [Amended]**

5. In § 92.418, the beginning of paragraph (a) would be amended by removing the first word "Cattle" and adding the phrase "Except for cattle imported for slaughter in accordance with § 92.420, cattle" in its place; and, in the second sentence, the second word "such" would be removed.

**§ 92.419 [Amended]**

6. In § 92.419, paragraph (a) would be amended by removing the first word "Sheep", and adding the phrase "Except for sheep and goats imported for slaughter in accordance with § 92.420, sheep" in its place; and paragraph (c) would be removed.

7. Section 92.420 would be revised to read as follows:

**§ 92.420 Ruminants from Canada for immediate slaughter.**

Any ruminant imported from Canada for immediate slaughter shall be consigned from the port of entry directly to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. Such ruminants shall be inspected at the port of entry and otherwise handled in accordance with § 92.408.

**§ 92.504 [Amended]**

8. Section 92.504 would be amended as follows:

a. In paragraph (c)(1), second sentence, the reference "(c)(3)" would be removed and "(c)(4)" would be added in its place.

b. Paragraph (c)(3) would be redesignated as paragraph (c)(4).

c. A new paragraph (c)(3) would be added to read as set forth below.

d. In newly redesignated paragraph (c)(4), paragraph 4 of the agreement, the phrase "Animal Quarantine Station in Clifton, New Jersey" would be removed and the phrase "Animal Import Center in Newburgh, New York" would be added in its place.

**§ 92.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.**

\* \* \* \* \*

(c) \* \* \* \* \*  
(3) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date the swine enters the park. If an APHIS veterinarian determines that the swine shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that the swine does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the swine's manure and other wastes may safely be disposed of outside the zoological park.

\* \* \* \* \*

9. Section 92.518 would be amended by adding a second sentence to read as follows:

**§ 92.518 Swine from Canada for immediate slaughter.**

\* \* \* As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

Done in Washington, DC, this 2nd day of November 1993.

Patricia Jensen,  
Deputy Assistant Secretary, Marketing and Inspection Services.  
[FR Doc. 93-27442 Filed 11-8-93; 8:45 am]  
BILLING CODE 3410-34-P

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 430**

[Docket No. EE-RM-93-501]

**Energy Conservation Program for Consumer Products: Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION: Notice of proposed rulemaking; rescheduling of public hearing.**

**SUMMARY:** In response to a request by the Gas Appliance Manufacturers Association (GAMA), the Department of Energy (DOE or the Department) is rescheduling the public hearing on Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters. This notice announces that the public hearing date scheduled for Monday, November 15, 1993, has been rescheduled on January 5, 1994.

**DATES:** Written comments in response to this document must be received by February 4, 1994.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on Wednesday, January 5, 1994. Requests to speak at the hearing must be received by the Department no later than 5 p.m., Thursday, December 23, 1993. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 5 p.m., Wednesday, December 29, 1993.

**ADDRESSES:** Written comments and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters," (Docket No. EE-RM-93-501), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

The hearing will begin at 9:30 a.m. and will be held at the U.S. Department of Energy, Forrestal Building, room 6E-069, 1000 Independence Avenue, SW., Washington, DC.

Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters Test Procedures," (Docket No. EE-RM-93-501), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read and/or photocopied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Cyrus H. Nasserli, U.S. Department of Energy, Office of Energy Efficiency

and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

**SUPPLEMENTARY INFORMATION:** The Department published a proposed rule on August 23, 1993, entitled "Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment and Pool Heaters" (58 FR 44538). In a letter dated October 14, 1993, GAMA requested the public hearing be rescheduled to provide time for GAMA to complete testing of various types of furnaces using the proposed test procedure in order to determine the impact of the test procedure changes on the measured furnace efficiency. In an October 18, 1993, letter, the Natural Resources Defense Council and the American Council for an Energy Efficient Economy jointly stated support for rescheduling the date of the public hearing.

Issued in Washington, DC, November 1, 1993.

Frank M. Stewart, Jr.,

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 93-27586 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-P

## 10 CFR Part 430

[Docket No. EE-RM-93-801]

### Energy Conservation Program for Consumer Products: Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Advance notice of proposed rulemaking; rescheduling of public hearing.

**SUMMARY:** In response to a request from the Gas Appliance Manufacturers Association (GAMA), the Air-Conditioning and Refrigeration Institute (ARI), and the Association of Home Appliance Manufacturers (AHAM), the Department of Energy (DOE or the Department) is rescheduling the public hearing concerning the Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products

(central air conditioners and central air conditioning heat pumps; furnaces/boilers; and refrigerators, refrigerator-freezers and freezers). This notice announces that the public hearing scheduled for November 16 and 17, 1993, has been rescheduled on January 6 and 7, 1994.

**DATES:** Written comments in response to this document must be received by February 7, 1994.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on January 6 and 7, 1994. Requests to speak at the hearing must be received by the Department no later than 5 p.m., Monday, December 27, 1993. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 5 p.m., Thursday, December 30, 1993.

**ADDRESSES:** Written comments and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Energy Conservation Standards for Three Types of Consumer Products," (Docket No. EE-RM-93-801), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

The hearing will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, room 6E-069, 1000 Independence Avenue, SW., Washington, DC.

Requests may be hand delivered to such address between the hours of 8 a.m., and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Energy Conservation Standards for Three Types of Consumer Products," (Docket No. EE-RM-93-801), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read and/or photocopied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Cyrus H. Nasserl, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel,

Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

**SUPPLEMENTARY INFORMATION:** The Department published an Advance Notice of Proposed Rulemaking on September 8, 1993, entitled "Energy Conservation Standards for Three Types of Consumer Products" (58 FR 47326). In a letter dated October 14, 1993, GAMA, ARI, and AHAM, requested additional time to complete discussions with interested parties concerning the next level of refrigerator standards. AHAM believes that the results of these discussions will be of value to DOE in developing and justifying the amended refrigerator standards. Further, GAMA, ARI and AHAM need additional time to complete the preparation of an alternative Manufacturers Impact Model which they wish to present at the public hearing. In an October 18, 1993, letter, the Natural Resources Defense Council and the American Council for an Energy Efficiency Economy jointly stated support for rescheduling the date of the public hearing.

Issued in Washington, DC, November 1, 1993.

Frank M. Stewart, Jr.,

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 93-27595 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 93-NM-77-AD]

### Airworthiness Directives; Fokker Model F-28 Mark 1000, MK 2000, MK 3000, and MK 4000 Series Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, that would have required the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. That proposal was prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their

economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises certain proposed compliance times and clarifies certain other proposed requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

**DATES:** Comments must be received by December 27, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-77-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. **FOR FURTHER INFORMATION CONTACT:** Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-77-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-77-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to Fokker Model F-28 Mark 1000, MK 2000, MK 3000, and MK 4000 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on June 4, 1993 (58 FR 31681). That NPRM would have required the implementation of a

corrosion prevention and control program (CPCP) either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. That NPRM was prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. That condition, if not corrected, could result in degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

Since the issuance of that NPRM, the FAA has received several comments from the manufacturer that have caused the FAA to reconsider its position on certain aspects of the proposed rule.

Fokker points out several inconsistencies between the proposed rule, and both the parallel Netherlands airworthiness directive (hereafter referred to as "the Netherlands BLA") and Fokker Document SE-253, "F-28 Corrosion Control Program" (hereafter referred to as "the Fokker Document") addressing this subject. Fokker requests that the FAA either justify the differences or change the proposal to parallel the Netherlands BLA and the Fokker Document so that all airplanes of this same type design worldwide will be implementing and conducting basically the same program. Specifically, Fokker points out the following items:

1. As proposed in paragraph (a)(1)(i), the compliance time for airplane areas that have not exceeded the Initial Inspection Time (IIT) would be less restrictive than the compliance time provided by the Netherlands BLA. A comparison of the requirements of the two directives for this specific action can be summarized as follows:

Task	RIT <sup>1</sup>	BLA compliance as of effective date	Original NPRM compliance as of effective date plus one year
S1 .....	1	Later of IIT or 1 year .....	No later than IIT + 1 year.
S2 .....	3	Later of IIT or 3 years .....	No later than IIT + 3 years.
S3 .....	6	Later of IIT or 6 years .....	No later than IIT + 6 years.

<sup>1</sup> Repeat inspection time.

The FAA agrees that paragraph (a)(1)(i) would impose a less restrictive general compliance time than that of the Netherlands BLA. U.S. operators would be provided an additional year to begin their program by virtue of the fact that the "starting time" for initiating the program would begin one year after the effective date of the final rule. This provision is comparable to other

provisions in similar AD's issued by the FAA and related to CPCP's for Boeing, McDonnell Douglas, Lockheed, British Aerospace, and Airbus products. Although this proposed initial starting time would be less restrictive than that of the Netherlands BLA, the FAA considers the additional year necessary in order to provide operators ample time to plan and prepare for implementing

the CPCP program, and to schedule for corrosion tasks to be accomplished coincidentally with normal major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling. The FAA does not consider that this relatively short extended compliance time will adversely affect

safety, since the corrosion program in itself is a long-term maintenance action.

Further, the FAA has reconsidered the compliance time for accomplishing the initial actions covered under paragraph (a)(1)(i) and finds that it is appropriate to revise that compliance time to be parallel with that of the Netherlands BLA. The FAA considers that the purpose of the CPCP program, and this proposed AD, is not merely to ensure the airworthiness of the individual aircraft, but to ensure that the manufacturer and aviation authorities have sufficient information regarding the corrosion status of the entire fleet; such information is necessary to ensure that the fleet as a whole provides an acceptable level of safety relative to corrosion. It is therefore important that the affected fleet is monitored in the same way and with the same timeliness worldwide. With this in mind, the FAA has revised proposed paragraph (a)(1)(i) to require that, for those airplanes that have not yet exceeded the IIT for a basic task, initial compliance must occur no later than the IIT, or no later than one RIT interval measured from a date one year after the effective date of the rule, whichever occurs later.

2. The compliance time of proposed paragraph (a)(1)(ii) would be more restrictive than that provided for by the program outlined in the Netherlands BLA. The BLA states that the inspection must be implemented "before the Repeat Inspection Time (RIT) is exceeded, or within 6 years, whichever occurs first." However, this parallel requirement in the proposed AD does not provide for the 6-year "optional" compliance time. The FAA does not concur. The CPCP outlined in the Fokker Document contains no task with an RIT that exceeds 6 years. Therefore, the FAA considers that the 6-year "optional" compliance time is unnecessary, since that time would never occur before the end of an RIT in any event. For this reason, paragraph (a)(1)(ii) of this supplemental NPRM remains unchanged.

Additionally, for this same reason, the FAA now finds that previously proposed paragraph (a)(1)(iii), which would have applied the same compliance time to "airplanes that are 20 years old or older," is no longer necessary. The requirements of proposed paragraph (a)(1)(ii) would be applicable to those airplanes 20 years or older; therefore, previously proposed paragraph (a)(1)(iii) has been deleted from the proposal.

3. The compliance aspects of proposed paragraph (a)(1)(iv) would be more restrictive than the parallel requirement in the Netherlands BLA. As

outlined in the proposed AD, operators would be required to accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of "one such area per year." However, the Netherlands BLA provides for a minimum implementation rate of "1 airplane every 2 years." The FAA responds by noting that it modeled the proposed provision after similar rulemaking, applicable to other aircraft models, that was issued previously. The FAA's intent in doing this was to standardize, as much as possible, the AD requirements for implementing a CPCP among all transport category aircraft; however, it was also the FAA's intent to base those requirements on the recommendations of the model-specific Working Groups, sponsored by the Airworthiness Assurance Task Force, that were tasked to develop corrosion-directed inspections and prevention programs. The FAA acknowledges that recommendations may vary between manufacturers and airplane types and, although standardization among all CPCP programs may be desirable, it may not always be possible due to various issues that may be specifically applicable to one model but not another. Upon reconsideration, the FAA has determined that it is appropriate to revise the proposed requirements to be parallel with the recommendations of the F-28 Working Group, as contained in the Fokker Document and the Netherlands BLA. The FAA considers that the schedule outlined in the Fokker Document is acceptable for identifying and effectively controlling corrosion in each affected operator's fleet. Accordingly, the relevant proposed paragraph, now designated as new paragraph (a)(1)(iii), has been revised to require that operators accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area every two years, beginning one year after the effective date of the AD. Although this wording may differ slightly from that of the Netherlands BLA, it achieves the same results.

4. The compliance time for submitting reports of findings of Level 2 and 3 corrosion, specified in proposed paragraph (g) as "quarterly," differs from that recommended in the Fokker Document. The Fokker Document indicates that reports of Level 3 corrosion findings should be submitted to Fokker within 7 days. Fokker prefers that this time frame be observed so that other operators can be informed quickly about these findings. The FAA agrees that it is appropriate that the

manufacturer should be informed of Level 3 corrosion findings as soon as practicable. Proposed paragraph (g), therefore, has been revised to require that operators submit a report to Fokker within 7 days after the detection of Level 3 corrosion, and within 3 months after the detection of Level 2 corrosion. Additionally, Note 11, under proposed paragraph (g), has been clarified to indicate that reports of Level 2 and Level 3 corrosion found as a result of any opportunity inspection should be submitted to the FAA.

The FAA has also revised the proposal to include new Note 3, which recommends that priority for implementing the CPCP be given to older airplanes and areas requiring a significant upgrade of previous maintenance procedures to meet the program requirements.

A new Note 5 has also been added to specify that airplane "areas," referred to in the proposed rule, are those items listed in columnar form in the ACTION statement of each task in the Fokker Document.

These added notes are consistent with information that is provided in the parallel Netherlands BLA.

Since certain of these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD. It would take an average of approximately 7 work hours per basic task to accomplish the 77 basic tasks called out in the Fokker CPCP Document; this represents a total average of 539 work hours (this figure includes not only inspection time, but access and closure time as well). The average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the 4-year average inspection cycle is estimated to be \$1,363,670, or \$29,645 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions (corrosion tasks) proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary

additional work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be minimal.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 93-NM-77-AD.

**Applicability:** Model F-28 Mark 1000, MK 2000, MK 3000, and MK 4000 series airplanes (does not include Model MK 0100 series airplanes), certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

**Note 1:** This AD references Fokker Document SE-253, "F-28 Corrosion Control Program," including all revisions through

September 15, 1992, (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

**Note 2:** As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM-113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

**Note 3:** The FAA recommends that priority for implementing the corrosion prevention and control program, specified in this AD, be given to older aircraft and areas requiring a significant upgrade of previous maintenance procedures to meet the program requirements.

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the basic tasks specified in Section 2.4 of the Document in accordance with the procedures of the Document and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

**Note 4:** A "basic task," as defined in Section 2.4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

**Note 5:** Airplane "areas" are those items listed in columnar form in the ACTION statement of each task, as listed in the Document.

**Note 6:** Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of paragraph (a)(1) of this AD.

**Note 7:** Where non-destructive inspection (NDI) methods are employed, in accordance with Section 2.4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Complete the initial basic task of each aircraft zone specified in Section 2.4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "Initial Inspection Time (IIT)" for a basic task as of one year after the effective date of this AD: Initial compliance must occur no later than the IIT, or no later than one Repeat Inspection Time (RIT) interval measured from a date one year after

the effective date of this AD, whichever occurs later.

(ii) For airplane areas that have exceeded the IIT for a particular basic task as of one year after the effective date of this AD: Initial compliance must occur within one RIT interval for that task, or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iii) Notwithstanding paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area every two years, beginning one year after the effective date of this AD.

**Note 8:** This paragraph does not require inspection of any area that has not exceeded the IIT for that area.

**Note 9:** This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each basic task at a time interval not to exceed the RIT interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial basic task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.360 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, extensions of RIT intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RIT interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model F-28 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model F-28 series airplanes

in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

**Note 10:** Notwithstanding the provisions of Section 2.1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA (ref. Note 2 of this AD) for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model F-28 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Within 7 days after the date of detection of any Level 3 corrosion, and within 3 months after the date of detection of any Level 2 corrosion, submit a report to Fokker of such findings, in accordance with Section 2.5 of the Document.

**Note 11:** Reporting to the FAA of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

**Note 12:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of inspection results required by this AD 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.

Issued in Renton, Washington, on November 3, 1993.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-27481 Filed 11-8-93; 8:45 am]

**BILLING CODE 4910-13-P**

## 14 CFR Part 71

[Airspace Docket No. 93-ASW-3]

### Proposed Establishment of Jet Route J-181

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Jet Route J-181 located in the vicinity of Dallas-Fort Worth, TX. This jet route is designed to provide improved en route and arrival traffic flow into the Chicago O'Hare, IL, terminal area. This action would enhance the movement of traffic and minimize air traffic delays.

**DATES:** Comments must be received on or before December 27, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 93-ASW-3, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193-0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and

Obstruction Evaluation Branch (ATP-240), Airspace Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Ave, SW., Washington, DC 20591; telephone: (202) 267-9250.

## 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, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace document 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. 93-ASW-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified 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 NPRM's

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-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.



**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Jet Route J-181 between the Dallas-Fort Worth, TX, metroplex area and the Chicago O'Hare, IL, terminal area. This jet route would provide improved en route and arrival traffic flow into the Chicago area. This action would reduce the controller workload. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route 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. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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**

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

**PART 71—[AMENDED]**

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

**Paragraph 2004—Jet Routes**

\* \* \* \* \*

**J-181 [New]**

From Dallas-Fort Worth, TX; Okmulgee, OK; Neosho, MO; to Bradford, IL.

\* \* \* \* \*

Issued in Washington, DC, on November 1, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93-27530 Filed 11-8-93; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 2**

[RM93-25-000]

**Use of Reserved Authority in Hydropower Licenses To Ameliorate Cumulative Impacts; Notice of Extension of Time for Comments**

November 1, 1993.

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Notice of proposed policy statement; extension of time for comments.

**SUMMARY:** On September 15, 1993, the Commission issued a notice of proposed policy statement with respect to the use of reserved authority in licenses for hydropower projects to ameliorate the cumulative impacts of such projects in the same river basin (58 FR 48994, September 21, 1993). The date for filing initial comments and reply comments is being extended at the request of various commenters.

**DATES:** The date for filing initial comments is extended to and including December 6, 1993. Reply comments shall be filed on or before January 5, 1994.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Lois D. Cashell, Secretary, (202) 208-0400.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-27474 Filed 11-8-93; 8:45 am]

**BILLING CODE 6717-01-M**

**18 CFR Chapter I, Subchapter B**

[RM93-23-000]

**Project Decommissioning at Relicensing; Notice of Extension of Time for Comments**

November 1, 1993.

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Notice of inquiry; extension of time for comments.

**SUMMARY:** On September 15, 1993, the Commission issued a notice of inquiry on a series of related questions that involve the decommissioning of licensed hydropower projects after the original license for the project has expired (58 FR 48991, September 21, 1993). The date for filing initial comments and reply comments is being extended at the request of various interested commenters.

**DATES:** The date for filing initial comments is extended to and including January 19, 1994. Reply comments shall be filed on or before February 18, 1994.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Lois D. Cashell, Secretary, (202) 208-0400.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-27473 Filed 11-8-93; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Assistant Secretary for Fair Housing and Equal Opportunity****24 CFR Part 135**

[Docket No. R-93-1677; FR-2898-N-02]

RIN 2529-AA49

**Proposed Amendments to Part 135—Economic Opportunities for Low- and Very Low-Income Persons; Comment Period Extension**

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** On October 8, 1993, the Department published a proposed rule that would implement section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development

Act of 1992. The proposed rule provided for a 30-day public comment period. At the request of interested members of the public, particularly public housing agencies, the Department has decided to extend the public comment period to December 8, 1993.

**DATES:** *Comment Due Date:* December 8, 1993.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Maxine B. Cunningham, Office of Fair Housing Assistance and Voluntary Programs, Section 3 Compliance Division, room 5232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2251 (voice/TDD). (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 8, 1993 (58 FR 52534), the Department published a proposed rule that would implement section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development Act of 1992. Amended section 3 requires that economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

The proposed rule provided for a 30-day public comment period. The Department reduced the comment period, as explained in the proposed rule (58 FR 52542), because the Department desired to have the new section 3 regulations in place for the Federal Fiscal Year (FY) 1994 funding cycle in an effort to increase the number of opportunities provided to low-income persons through the expenditure of HUD assistance provided to housing authorities and other recipients of section 3 covered HUD program assistance.

However, the Department has received a number of requests from

interested members of the public, particularly public housing agencies (PHAs), to which the section 3 regulations would largely apply, requesting an extension of the public comment period. PHAs have noted that within the last few months their resources have been stretched to submit comments by the comment deadline on several significant rules issued by the Department which apply to PHAs (e.g., the Department's "Preference" proposed rule published on August 25, 1993 (58 FR 44968), for which comments were due by October 25, 1993, and the notice of publication of the preliminary report by the Task Force on Occupancy Standards (58 FR 45905), for which comments were initially due by November 1, 1993, and now due on December 1, 1993 as a result of an extension granted on October 19, 1993 (58 FR 53937)).

Accordingly, the Department agrees to an extension of the public comment period, and this notice is to announce the extension of the public comment period to December 8, 1993.

Dated: November 3, 1993.

**Myra L. Ransick,**

*Assistant General Counsel for Regulations.*

[FR Doc. 93-27485 Filed 11-8-93; 8:45 am]

**BILLING CODE 4210-28-M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Parts 701, 784, and 817

**RIN 1029-AB69**

#### Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) published a proposed rule which would amend the regulations applicable to underground coal mining and the control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. OSM has received requests to hold public hearings on the proposed rule and is announcing that public hearings will be held.

**DATES:** Public hearings are scheduled for: November 8, 1993, in Harrisburg,

Pennsylvania, at 1 p.m. local time; November 9, 1993, in Columbus, Ohio, at 9 a.m. local time; November 16, 1993, in Whitesburg, Kentucky, at 7 p.m. local time; November 17, 1993, in Salt Lake City, Utah, at 1 p.m. local time; November 19, 1993, in Washington, DC at 9 a.m. local time; and November 22, 1993, in Washington, Pennsylvania, at 1 p.m. local time.

**ADDRESSES:** The public hearings will be held at the Sheraton Inn Harrisburg East, 800 East Park Drive, Harrisburg, Pennsylvania; the Dover Room of the Ramada Inn East, 2100 Brice Road, Columbus, Ohio; the Appal Shop Theater, 306 Madison Street, Whitesburg, Kentucky; the Utah Division of Oil, Gas and Mining, 3 Triad Center, Suite 520, 355 West North Temple, Salt Lake City, Utah; the South Interior Building, 1951 Constitution Avenue, NW., room 220, Washington, DC; and the Holiday Inn Meadow Lands, 340 Race Track Road, Washington, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:**

Nancy R. Broderick, Branch of Federal and Indian programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208-2564.

**SUPPLEMENTARY INFORMATION:** On September 24, 1993 (58 FR 50174), OSM published a proposed rule which would require all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations; rehabilitate, restore, or replace identified structures and compensate owners in the full amount of the diminution in value resulting from the subsidence; replace water supplies which have been adversely affected by underground coal mining operations; perform a pre-subsidence survey and repair or compensate for subsidence-related damage caused by underground mining activities to structures or facilities; and provide, when necessary, an additional performance bond to cover subsidence-related material damage. The proposed rule provides for broader protection of structures by removing the provision that imposes a State law limitation on an underground coal mine operator's liability for damage to structures. Performance standards required by the Energy Policy Act of 1992 would be enforceable nationwide immediately upon the effective date of the final rule.

OSM has received requests to hold public hearings on the proposed rule. As a result, OSM has scheduled a public hearing on the proposed subsidence rule in Harrisburg, Pennsylvania; Columbus, Ohio; Whitesburg, Kentucky; Salt Lake City, Utah; Washington, DC; and Washington, Pennsylvania. Refer to **DATES** and **ADDRESSES** for the times, dates and locations for each hearing. A notice for the public hearing in Columbus, Ohio, and a notice for the public hearings in Harrisburg, Pennsylvania; Whitesburg, Kentucky; Washington, DC; and Washington, Pennsylvania were previously published in the *Federal Register* on October 27, 1993 (58 FR 57766), and on November 2, 1993 (58 FR 58518), respectively. Notices of those hearings are included here so that those wishing to attend a public hearing may choose the most convenient location. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The hearings will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Dated: November 3, 1993.

**Brent Wahlquist,**

*Assistant Director, Reclamation and Regulatory Policy.*

[FR Doc. 93-27486 Filed 11-8-93; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 110

[CGD08-93-021]

#### **Anchorage Grounds; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to amend the anchorage ground regulations for Magnolia Anchorage, Cedar Grove Anchorage, Lower 12 Mile Point Anchorage and New Orleans General Anchorage. These amendments will expand the size of three of the anchorages to provide additional anchorage space for deep draft vessels and reduce the size of the Lower 12 Mile Point Anchorage by 0.1 of a mile.

**DATES:** Comments must be received on or before December 27, 1993.

**ADDRESSES:** Comments should be mailed to: Commander (oan), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396. The comments and other materials related to this notice will be available for inspection and copying in room 1209 at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. M.M. Ledet, Project Officer, Commander (oan), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396. Telephone (504) 589-4686.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD08-93-021, the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

#### **Drafting Information**

The drafters of this regulation are Mr. M.M. Ledet, Project Officer, Eighth Coast Guard District Aids to Navigation Branch, and CDR D.G. Dickman, Project Attorney, Eighth Coast Guard District Legal Office.

#### **Discussion of Regulation**

The U.S. Army Corps of Engineers conducts revetment work along the banks of the Mississippi River to protect against erosion and caving. This work is essential to preserve the levee system. Currently, articulated concrete mattress revetment is used in a number of designated anchorages serving the Port of New Orleans. Federal regulations prohibit vessels from anchoring over this revetment. Because designated anchorages were reduced in size when this revetment was placed, members of

the maritime community have expressed concerns regarding the devastating impact this work has had on the amount of available space within currently designated anchorage grounds in the area of the Port of New Orleans. To alleviate these concerns, the Coast Guard is proposing expansion of available anchorage space through the following amendments:

(a) Extension of the upper limits of Magnolia Anchorage to Mile Marker 47.6 AHP. This will extend the limits of this anchorage 0.7 of a mile in length.

(b) Extension of the upper limits of Cedar Grove Anchorage to Mile Marker 71.1 AHP. This will extend the limits of this anchorage 0.5 of a mile in length.

(c) Extension of the lower limits of New Orleans General Anchorage to Mile Marker 90.0 AHP. This will extend the limits of this anchorage 0.5 of a mile in length.

Movement of the lower limits of Lower 12 Mile Point Anchorage to Mile Marker 78.6 AHP will reduce the length of this anchorage by 0.1 of a mile. This is necessitated by the fact that a ship in the lower end of the anchorage significantly impacts on the ability of ships in the channel to meet at that particular location. This is because this end of the anchorage sits at a location in the river at English Turn that requires vessels to turn and swing wider to make the turn.

#### **Regulatory Evaluation**

This regulation is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a Regulatory Evaluation is unnecessary. The regulation will in fact have a positive impact on boat launch and ship support activities. The regulation will also enhance safe navigation on the Lower Mississippi River by providing additional safe anchorage outside the navigable channel for large vessels.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons specified in the Regulatory Evaluation section of this

rule, the Coast Guard has determined that this rule will have minimal, if not a positive, impact on non-participating small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**Federalism Assessment**

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

**Environmental Assessment**

This proposed rule has been thoroughly reviewed by the Coast Guard. It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. The Coast Guard welcomes comments on potential environmental impacts of this proposal.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Regulations**

For the reasons set out in the preamble, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

**PART 110—ANCHORAGE REGULATIONS**

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.195 is amended by revising paragraphs (a)(7), (a)(11), (a)(13) and (a)(15) to read as follows:

**§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.**

(a) \* \* \*

(7) *Magnolia Anchorage.* An area 2.1 miles in length along the right descending bank of the river from mile 45.5 to mile 47.6 above Head of Passes.

From mile 45.5 to mile 46.3, the area has a width of 1100 feet. From mile 46.3 to mile 47.6, the area has a width of 600 feet as measured 500 feet riverward from the right descending bank.

\* \* \* \* \*

(11) *Cedar Grove Anchorage.* An area 1.2 miles in length along the right descending bank of the river, 700 feet wide as measured 400 feet from the Low Water Reference Plane of the right descending bank extending from mile 69.9 to mile 71.1 above Head of Passes.

\* \* \* \* \*

(13) *Lower 12 Mile Point Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide extending from mile 78.6 to mile 80.8 above Head of Passes.

\* \* \* \* \*

(15) *New Orleans General Anchorage.* An area 0.9 of a mile in length along the right descending bank of the river, 800 feet wide extending from mile 90.0 to mile 90.9 above Head of Passes. The area's width is 800 feet measured from the shore.

\* \* \* \* \*

Dated: September 30, 1993.  
 C.B. Newlin,  
*Acting Captain, U.S. Coast Guard, Chief of Staff, Acting District Commander.*  
 [FR Doc. 93-27568 Filed 11-8-93; 8:45 am]  
 BILLING CODE 4910-14-M

**33 CFR Part 117**

[CGD07-93-091]

**Drawbridge Operation Regulations; Kissimmee River, FL**

**AGENCY:** Coast Guard, DOT.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change regulations governing the operation of the CSX Railroad bridge, at mile 37.0, near Fort Basinger, Florida, by requiring 96 hour advance notification for an opening of the draw. This proposal is being made to be consistent with three other bridges on the waterway. This action would relieve the bridgeowner of the burden of having a person available within 72 hours to open the draw, which has not opened during the past twenty years, while still providing for the reasonable needs of navigation.

**DATES:** Comments must be received on or before December 27, 1993.

**ADDRESSES:** Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m.,

Monday through Friday, except federal holidays. The telephone number is (305) 536-4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Walter Paskowsky, Project Manager, Bridge Section at (305) 536-4103.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07-93-091] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walt Paskowsky at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

**Drafting Information**

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT J.M. Losego, Project Counsel.

**Background and Purpose**

This swingbridge presently opens with 72 hours advance notice for the passage of floating equipment employed for flood control work under the jurisdiction of the South Florida Water Management District or the U.S. Army Corps of Engineers. This regulation was established in 1964 by the U.S. Army Corps of Engineers when the Kissimmee River Flood Control Project was under construction. The State Road 70, 78 and 98 highway bridges which cross the

same waterway have been authorized to open with 96 hours advance notice. This change will allow the CSX Railroad bridge at mile 37.0, which must be opened by hand, to open with a similar 96 hour advance notice.

The limitation on the type of navigation which would be allowed an opening would be removed; however, there is not expected to be an increase in the number of openings, since the level of navigation on the waterway is limited to small recreational vessels. The proposed rule will also identify the current owner of the bridge.

#### Discussion of Proposed Amendment

The drawbridge was last opened in 1970 for the passage of flood control equipment. No increase in drawbridge openings is anticipated in the future unless the Kissimmee River restoration project is completed, which could substantially increase navigation on the waterway.

#### Regulation Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the drawbridge has not been opened during the past twenty years.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the drawbridge has not opened since 1970, the increase in advance notification requirements will not affect commercial navigation.

Because it expects the impact of the proposal to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

#### Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

#### List of Subjects in 33 CFR Part 117

##### Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 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).

2. § 117.295 is revised to read as follows:

##### § 117.295 Kissimmee River.

The draw of the CSX Railroad bridge, mile 37.0, near Fort Basinger, shall open it at least 96 hours notice is given.

Dated: October 25, 1993.

**W.P. Leahy,**

*Admiral, U.S. Coast Guard, 7th Coast Guard District.*

[FR Doc. 93-27569 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-14-M

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[IN26-2-6048; FRL-4799-1]

#### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; Withdrawal.

**SUMMARY:** On February 1, 1993, the United States Environmental Protection Agency (U.S. EPA) proposed a limited approval/limited disapproval of a February 4, 1992, source-specific revision request to the Indiana Lead

State Implementation Plan (SIP). The revision request contained certain enforceability and modeling deficiencies and did not address all pertinent federal requirements.

On September 23, 1993, the State of Indiana formally withdrew the February 4, 1992 submittal and concurrently submitted a September 2, 1993 emergency rule which is effective for 6 months. This subsequent submittal has nullified the proposed rulemaking action. A permanent rule will replace the emergency rule upon expiration, at which time U.S. EPA will make a completeness determination and take rulemaking action.

**DATES:** This withdrawal will be effective December 9, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Rosanne Lindsay, Regulation Development Branch, Regulation Development Section (5AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-1151.

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

Environmental protection, Lead, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: October 22, 1993.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 93-27603 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-50-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Reclamation

##### 43 CFR Part 426

RIN 1006-AA33

#### Acreage Limitation

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to propose rulemaking.

**SUMMARY:** The Reclamation Reform Act of 1982 (RRA) requires landholders (landowners and lessees) to meet certain requirements in order to be eligible to receive irrigation water from Reclamation projects. The Bureau of Reclamation (Reclamation) intends to revise 43 CFR part 426 to impose administrative fees to recover costs incurred by Reclamation when irrigation water has been delivered to landholders who have not complied with the statutory requirements.

**DATES:** Comments on the proposed rulemaking action must be submitted on or before December 9, 1993.

**ADDRESSES:** Written comments must be submitted to J. William McDonald, Assistant Commissioner—Resources Management, Bureau of Reclamation, Attention: D-5640, PO Box 25007, Denver, CO 80225.

**FOR FURTHER INFORMATION CONTACT:** Gary Anderson, Chief, Reclamation Law Administration Branch, Bureau of Reclamation, Attention: D-5640, PO Box 25007, Denver, CO 80225, Telephone: (303) 236-8530.

**SUPPLEMENTARY INFORMATION:** Reclamation law establishes the terms and conditions under which Reclamation irrigation water may be delivered. The RRA, which was signed into law on October 12, 1982, made a number of changes to prior Reclamation law, but retained the principle of limiting the amount of land in ownership which may receive water deliveries from Reclamation projects. The RRA also created limitations on the amount of owned and leased land a farmer may irrigate at subsidized water rates. In order to ensure compliance with these limitations on subsidies, the RRA requires, among other things for landowners and lessees to report their acreage as a condition for receiving Reclamation irrigation water.

Reclamation has found that the current regulations do not address the situation when irrigation districts deliver water to landholders who have failed to meet all of the RRA requirements. Also, the current regulations do not address what actions should be taken and what costs should be recovered in bringing these landholders into compliance with the RRA. Reclamation plans to revise the regulations to provide for the imposition of administrative fees upon violators to recover Reclamation's costs in discovering and addressing their violations. Reclamation intends to impose fees to improve compliance with the statutory requirements and to ensure that Reclamation irrigation water is not delivered to ineligible landholders. The public is invited to submit written comments on the proposed rulemaking action.

Dated: November 1, 1993.

**Daniel Beard,**  
Commissioner  
[FR Doc. 93-27611 Filed 11-8-93; 8:45 am]  
BILLING CODE 4310-04-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 160

[CGD 93-055]

RIN 2115-AE58

#### Inflatable Personal Flotation Devices

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering the development of regulations establishing a Coast Guard Approval Program for inflatable personal flotation Devices (PFD's) for recreational boaters. If promulgated, these new regulations would establish structural and performance standards for inflatable PFD's, as well as the procedures for Coast Guard approval for inflatable PFD's. They would also amend the PFD carriage requirements to permit inflatables in addition to the presently approved inherently buoyant types to meet carriage requirements on recreational boats or possibly other vessels.

**DATES:** Comments must be received on or before March 9, 1994.

**ADDRESSES:** (a) Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406)(CGD 93-055), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between the hours of 8 a.m. and 4 p.m. Monday through Friday except Federal holidays. The telephone number is (202) 267-1477 for further information about submitting comments. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

(b) Copies of the Boat/U.S. Foundation for Boating Safety Study, "Inflatable Personal Flotation Device Study: An Examination of Inflatable PFD Performance and Reliability in Public Use" dated March 11, 1993, can be obtained at the address mentioned under "FOR FURTHER INFORMATION CONTACT" in this section.

(c) Copies of the Coast Guard Auxiliary Study, "INFLATABLE PERSONAL FLOTATION DEVICE STUDY," discussed in this document are available from the National Technical Information Service, Springfield, VA 22151 by referring to the publication number. The

publication number for Report No. CG-M-5-81 is AD A107941.

(d) For information on the Underwriters Laboratories (UL) consensus standard for inflatable PFD's contact: Mr. Dan Ryan, Underwriters Laboratories, P.O. Box 3995, 12 Laboratory Drive, Research Triangle Park, NC 27709 or telephone (919) 549-1400 between the hours of 8 a.m. and 4 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ensign Stephen H. Ober, Office of Marine Safety, Security, and Environmental Protection, Attn: G-MVI-3/14, 2100 Second St., SW., Washington, DC 20593-0001, or telephone (202) 267-1444 between the hours of 8 a.m. and 3:30 p.m. Monday through Friday except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments and by participating in the development of a consensus standard for inflatable PFDs. Persons submitting comments should include their name and address, identify this ANPRM (CGD 93-055) and the specific section or paragraph of this proposal to which each comment applies, and give reasons for each comment. Comments on any of the issues listed under "Factors To Be Considered" at the end of this notice are of particular interest to the Coast Guard. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all written comments received during the comment period.

##### Public Hearing

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

##### Consensus Standard Development Participation

Persons having experience or expertise with inflatable PFDs or their

components may obtain information on how to participate in the consensus standard development at the address mentioned under "FOR FURTHER INFORMATION CONTACT" section or item "(d)" in the "ADDRESSES" section.

#### Drafting Information

The Principal persons involved in drafting this document are Mr. Samuel E. Wehr and Ensign Stephen H. Ober, Office of Marine Safety, Security, and Environmental Protection, and LT Ralph Hetzel, Office of Chief Counsel.

#### Discussion

Inflatable PFD's have been precluded from Coast Guard approval in the past because they are more susceptible to total loss of buoyancy than their inherently buoyant counterparts, or may not inflate when needed. Failure of the wearer to actuate or properly maintain the inflation mechanism, possible malfunctions of the inflation mechanism, or loss of air from the inflation compartment due to puncture or structural failure can result in the device being totally ineffective.

On the other hand, too many people drown each year because they did not wear or have a PFD available for use. Inflatable PFDs are made to be less bulky than inherently buoyant PFDs and therefore may overcome at least one of the major objections that boaters have to wearing a PFD. Offering a USCG approved inflatable PFD for recreational boaters has the potential to reduce the number of deaths each year caused by drowning of individuals not wearing a PFD.

#### Background

In 1978 a project was begun to investigate inflatable PFDs and how to increase the wearing of PFDs by boaters and thereby possibly reduce the number of deaths caused by drowning. A notice of proposed rulemaking (NPRM) was published in the *Federal Register* on May 29, 1985 (50 FR 21878) which proposed requirements for both recreational and commercial hybrid inflatable PFD's and commercial inflatable lifejackets. An interim final rule (IFR) promulgating hybrid PFD requirements for recreational boaters and certain commercial operations was published in the *Federal Register* on August 22, 1985 (50 FR 33923). Comments that addressed concerns relating to the hybrid PFD requirements were analyzed and discussed in the August 22, 1985 IFR. A specification for approval of inflatable lifejackets for inspected, commercial applications was promulgated under 46 CFR 160.176, published in the *Federal Register* on

June 27, 1991 (56 FR 29439). Inflatables were deemed not suitable for approval for recreational boaters primarily because of concern that they might not be properly maintained and would fail when needed. This concern was expressed in the February 1981, U.S. Coast Guard Auxiliary "Inflatable Personal Flotation Device Study" which stated "inflatable PFDs would not be operable between 12.3% and 20.1% of the time throughout the boating season".

The hybrid PFD rulemaking established subpart 160.077 of subchapter Q of title 46 of the Code of Federal Regulations in an effort to provide a high-performance, yet more comfortable PFD to wear, thereby increasing the use of the PFDs. However, this Subpart has resulted in only a few approved designs for recreational boaters, one of which has gone out of production. For commercial users, no designs have been formally submitted for approval. Hence the subpart has not served its entire purpose. Revisions to the hybrid approval specification are being considered as separate project.

Performance characteristics and construction of inflatables have improved significantly over the years. In addition, recent studies conclude that the average recreational boater may wear certain inflatables more than the inherently buoyant types because the inflatables can be less bulky, more comfortable and attractive. This increase in wearability could decrease the annual number of recreational boating deaths by drowning (673 deaths in 1992 alone).

However, a 2½ year study completed in the spring of 1993 under a USCG grant "Inflatable Personal Flotation Device Study; An Examination of Inflatable PFD Performance and Reliability in Public Use" by the BOAT/ U.S. Foundation for Boating Safety shows that average recreational boaters have some difficulty maintaining inflatable PFDs ready for use with the present inflation hardware. This study was preceded by the February 1981, U.S. Coast Guard Auxiliary "Inflatable Personal Flotation Device Study", which initially pointed out the maintenance problems. Both studies indicate the inflation system or some other aspect of the PFD must address the human element involved with proper maintenance and usage of it.

Recent developments in inflation mechanism technology indicate that user-friendly inflators might be developed at reasonable cost. Some experts in PFD's question the feasibility of such inflators. Having an inflator assembly that provides a positive

indication which shows if CO<sub>2</sub> inflation/discharge has occurred would help the boater determine the status of the device. This would give the boater a positive means to check whether the inflation assembly on the PFD is in an operable condition. Such a feature shows great promise for overcoming many of the maintenance problems reported in the studies.

Changes to the vessel carriage requirements to address serviceability as well as requirements for consumer notification by the manufacturer to advise them of PFD design/component defects might further reduce the risks of inflatable PFDs contributing to fatalities. Additionally, the development of recreational submarines and novel craft (hydrofoil and hovercraft), which have little or no storage space, necessitates the need for compact, lightweight and reliable PFD's for use in this environment.

#### Approach

The Coast Guard proposes to proceed with this project by participating in the development of a consensus standard for adult inflatable devices with a national consensus standards making body such as Underwriters Laboratories (UL). Consensus standards are those generally agreed to by a super majority (2/3) of the knowledgeable individuals in the field who have volunteered to participate in the development effort for the specific device. The Coast Guard would then propose to adopt the consensus standard. When the industry consensus standard is complete and available, the public will have another opportunity to comment on the standard and the proposed rules. This information will be published in the *Federal Register* in the form of a notice of proposed rule making (NPRM). Additional information on how to participate in the consensus standard development may be obtained at the address mentioned under "FOR FURTHER INFORMATION CONTACT" section or item "(d)" in the "ADDRESSES" section. The Coast Guard realizes that the consensus standard may not address all the issues or characteristics essential to the Coast Guard or the public to make the devices suitable for use by all boaters on all vessels. Such deficiencies will be addressed by specifications and/or operating conditions in the regulations.

Generally, for this project to have a net benefit (result in lives saved), it must be done so that it increases the aggregate lifesaving potential of PFD's used on recreational boats. For this to occur, three conditions must be met:

(1) The wearability and effectiveness of the inflatable PFD must be better than currently approved PFD's,

(2) The reliability of the inflatable PFD must not be significantly reduced as compared to currently approved PFD's and,

(3) The devices must be affordable so significant numbers of boaters will buy them. The Coast Guard will carefully weigh the necessary trade-offs among these conflicting requirements.

There are numerous detailed technical alternatives in specifying the minimum performance required of inflatable PFDs. The Coast Guard will discuss as many of these alternatives as possible and resolve them through the consensus standards making process. Those remaining unresolved will be presented in the NPRM on recreational inflatable PFD's for public comment.

#### Factors To Be Considered

In addition to providing notice of the consensus standards making process, this advance notice of proposed rulemaking is issued to solicit comment on certain broad, initial issues relating to the proper approach and recommended content of the standards. The Coast Guard requests public as well as industry views and data specifically relating to the following issues and possible requirements for inflatable PFD's.

1. An inflation system that indicates its condition appears to be the best approach to overcome the major reliability problem with inflatables. Two independent studies have shown that recreational boaters do not always maintain inflatable PFDs in an overall serviceable condition. Thus, something must be done to increase an inflatable PFD's reliability. An indicating device will assist users in keeping the devices in a serviceable condition. Such a feature should alleviate the great majority of maintenance problems reported in the recently completed study by allowing the inflation system to be "self inspecting." The indicating device should be a single, obvious feature of the inflation system, that will allow the boater to be reasonably sure the PFD is ready to function/perform when used or be able to identify if the device requires servicing or rearming.

2. Approval of several types of inflatable PFD's will provide more choices suitable for a variety of different boating activities. Devices to be approved under this rule change would probably be labeled as Type I or II PFDs in addition to Type V. A Type V device is intended for use in specific activities, on limited types of vessels, or under

specific use conditions as indicated on the PFD label.

3. The "approved only when worn" approach was developed to ensure that hybrid PFDs would be maintained. However, this requirement may have been a factor in the hybrid's lack of acceptance. For devices equipped with a positive means to identify if the inflation assembly has been discharged, the Coast Guard may not impose the condition that the device be "required to be worn" to meet the carriage requirements on recreational boats. This would remove the problem of having to carry two devices if the user were concerned that the device could or would not be worn at all times. This will result in cost savings to some boaters who prefer to use inflatable PFDs, but who must at present also carry an approved, inherently buoyant device to meet carriage requirements. The approval condition "required to be worn" or "approved only when worn" might be required on inflatable devices that do not have a means of indicating whether the inflation assembly has been discharged. These devices would be labeled as a Type V PFD. Such a condition on approval would likely increase the chance that an inflatable will receive the attention required to ensure it is maintained in a serviceable condition. This alternative will be further evaluated during the rulemaking process.

4. Removing the requirement for two chambers on all but the highest performing devices (Type I's) will reduce the cost of devices intended for most of the recreational sector.

5. Making inflatable PFDs "associated equipment" in 33 CFR part 179 under 46 U.S.C. 4310 would make the retailer/manufacturer subject to the defect notification requirements of that statute. This would provide better accountability and a positive means to identify reliability problems which may arise as a result of approval of a potentially less reliable device. Accordingly, the retailer or manufacturer (if manufacturer sells directly to the consumer) might be required to generate records listing consumers who purchased the inflatable PFD in the event there is a problem with the device, so the consumer can be notified of the defect and be given a means to correct it.

6. Further defining "serviceable" in the carriage requirements as requiring inflatables to have a properly armed inflation mechanism, would encourage the development of devices meeting the Coast Guard's standards for inflation mechanisms that have good human engineering characteristics such as ease

of use, ease of maintenance, and positive feedback, since professional servicing will not be used. Adding this condition for an inflatable to be considered "serviceable" appears essential to the successful use of inflatable PFD's.

7. Additionally, the Coast Guard requests views and data relating to the following specific issues for inflatable PFD's.

(A) The restrictions that should be placed on the use of inflatable PFD's by non-swimmers and children;

(B) The feasibility of requiring an automatic inflation mechanism for non-swimmers and children or prohibiting the use of inflatables altogether for people in these categories;

(C) The average boater's ability to determine if an inflatable PFD is in a serviceable condition if it has a "self inspecting" inflation system;

(D) Whether inflatable PFD's are too complicated for some people to operate in an emergency situation;

(E) The price of an inflatable PFD at which the average boater will purchase the device;

(F) The service life that should be expected of inflatable PFDs.

8. Other measures that might be considered but are presently *not* envisioned for this project include:

(A) Coast Guard requirement for professional servicing at "approved" servicing facilities. Professional servicing is expensive and administering approval of such facilities is a very large task. Additionally, the studies show that each time an inflatable is used there is the potential for it either to not be rearmed or to be rearmed improperly. Servicing by the manufacturer, dealer, or their agents may be beneficial after some long period of use, such as 5 years, but will not be necessary with "self inspecting" inflation systems.

(B) A system of accountability for the servicing facilities would be considered, if it would not be too cumbersome to administer.

Public comments are requested on the above issues as well as any issue related to the subject matter of this advance notice of proposed rulemaking.

Comments are strongly encouraged on the relative strengths and/or weaknesses of each item discussed. Suggestions for other alternatives are also highly encouraged.

Dated: October 14, 1993.

R.C. North,  
Captain, U.S. Coast Guard, Acting Chief,  
Office of Marine Safety, Security and  
Environmental Protection.

[FR Doc. 93-27570 Filed 11-8-93; 8:45 am]

BILLING CODE 4810-14-M



**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 93-28, RM-8172, RM-8299]

**Radio Broadcasting Services; Colonial Heights, TN****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule; order to show cause.

**SUMMARY:** This document directs WFSM, Inc., and Franklin Communications, Inc., respective licensees of Station WCTU-FM, Channel 231A, Tazewell, Tennessee, and Station WMKK-FM, Channel 240A, Morristown, Tennessee, to show cause why their licenses should not be modified to specify operation on Channel 290A and 231A accordingly, instead of the present Channel 231A and Channel 240A. This action would allow Murray Communications, permittee of Channel 290A, Colonial Heights, Tennessee, to upgrade its facility to Channel 240C2 or, alternatively, to Channel 240C3. The coordinates for Channel 290A at Tazewell, Tennessee, are 36-27-32 and 83-35-07. The coordinates for Channel 231A at Morristown, Tennessee, are 36-13-40 and 83-14-58. The coordinates for Channel 240C2 at Colonial Heights, Tennessee, are 36-35-35 and 82-37-16. The coordinates for Channel 240C3 at Colonial Heights are 36-31-36 and 82-35-14. This Order does not afford additional opportunity either to comment on the merits of the conflicting proposal or for the acceptance of additional counterproposals.

**DATES:** Comments must be filed on or before December 27, 1993.**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, Esq., P.O. Box 986, Brentwood, Tennessee 37027-0986, Counsel for Murray Communication.**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order to Show Cause, MM Docket No. 93-28, adopted October 18, 1993, and released November 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference

Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street NW, suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should not that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-27451 Filed 11-9-93; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 192**

[Docket No. PS-124; Notice 2]

RIN 2137-AC25

**Regulatory Review: Gas Pipeline Safety Standards; NAPSRS Report on Recommendations for Revision of Gas Pipeline Safety Standards****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of request for information.

**SUMMARY:** This document invites public comment on rulemaking proposals from the National Association of Pipeline Safety Representatives (NAPSR) for the safety of natural and other gas pipelines. The proposals result from a study NAPSR conducted, at the request of RSPA, of pipeline safety regulations which they considered unclear or difficult to enforce. Comments on the NAPSR study will assist RSPA in developing a position on the NAPSR recommendations.

**DATES:** Interested persons are invited to submit comments by January 10, 1994.

**ADDRESSES:** Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001. Identify the docket and notice number stated in the heading of this notice. Comments will become part of this docket and will be available for inspection or copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day.

**FOR FURTHER INFORMATION CONTACT:** Christina M. Sames, (202) 366-4561, regarding the content of this document, or the Dockets Unit, (202) 366-5046, regarding copies of this document or other material in the docket.

**SUPPLEMENTARY INFORMATION:****Related Document**

On August 31, 1992, RSPA published a notice of proposed rulemaking (NPRM) (Docket PS-124, 57 FR 39572), titled "Regulatory Review: Gas Pipeline Safety Standards." This NPRM proposed 38 amendments to 49 CFR part 192 to provide clarity, to eliminate unnecessary or overly burdensome requirements, and to foster economic growth. The proposed amendments resulted from the regulatory review RSPA carried out in response to a Presidential directive issued January 28, 1992. Several of NAPSR's proposals address some of the same sections or provisions as those raised in the NPRM. Comments to these sections will be included in Docket PS-124 and will be taken into account during the development of the final rule.

**Background Information**

NAPSR is a non-profit organization of state gas pipeline safety directors, managers, inspectors, and technical personnel who serve to support, encourage, develop and enhance pipeline safety regulation. NAPSR submits resolutions to RSPA annually that identify serious pipeline safety concerns of national scope for consideration in regulatory and enforcement activities.

In 1990, RSPA asked NAPSR to review the pipeline safety standards in 49 CFR part 192. The review was to focus on regulations where revision was needed in order to make the regulations more explicit, understandable and enforceable. RSPA limited the review to the 20 highest priority issues with two of those issues relating to corrosion control. For fiscal year 1991, Congress appropriated funds to RSPA to procure technical assistance from state pipeline

inspectors in conducting an assessment of 49 CFR part 192.

NAPSR's report of its review is set forth immediately following this notice. The report is published in its entirety and includes background information, the 20 priority items, and 13 technical corrections. RSPA is considering each proposal to determine the appropriate action to take.

With regard to the NAPSR report, RSPA is particularly interested in receiving comments that address the safety problem implied by each proposal, discuss the effectiveness of any current Federal, state, or voluntary standard that relates to the problem, and describe ways now being applied or available to resolve the problem. Comments are also requested on the feasibility and cost-effectiveness of implementing each proposal or any alternative way to resolve the problem. In responding to this notice, commenters are requested to use section numbers to identify the proposal to which their specific remarks are addressed.

**Authority:** 49 App. U.S.C. 1671 and 1804; 49 CFR 1.53 and Appendix A to part 106.

Issued in Washington, DC, on November 4, 1993.

**Richard L. Beam,**

*Acting Associate Administrator for Pipeline Safety.*

#### **REPORT ON RECOMMENDATIONS FOR REVISION OF 49 CFR PART 192**

**For the US-DOT Research and Special Programs Administration Office of Pipeline Safety; Prepared by the NAPSR Liaison Committee November 20, 1992**

#### *Introduction and Background*

On January 21, 1988, in Docket No. PS-99, the Research and Special Programs Administration (RSPA) of the U.S. Department of Transportation adopted a number of amendments to the minimum pipeline safety standards of 49 CFR part 192. Most of the regulation changes had originally been proposed by the New England Gas Association (NEGA), which had submitted a list of 71 suggested changes intended to "clarify the intent of the regulations and reduce the cost of compliance without compromising pipeline safety."

The initiative taken by NEGA was noted by members of the National Association of Pipeline Safety Representatives (NAPSR). There was general discussion at the 1989 NAPSR National Meeting in New Orleans of whether a similar project, although geared more towards areas of enforcement problems, should be undertaken by NAPSR.

At the 1990 NAPSR National Meeting in Orlando, Florida, RSPA's Office of Pipeline Safety (OPS) approached NAPSR and requested a rules review study be made, with emphasis on those areas where the performance language of existing regulations was not sufficient to insure safe practices by pipeline operators, or to permit action by enforcement agencies. After further discussion at the 1991 NAPSR National Meeting in Santa Fe, the project was assigned to the NAPSR Liaison Committee, a standing committee established to provide a continuity of relationship among NAPSR members and between NAPSR and RSPA. RSPA specifically requested that NAPSR's study of recommended rule changes be limited to the 20 highest priority issues. In addition, at a later date RSPA specifically requested, in response to National Transportation Safety Board safety recommendations, that the committee include two corrosion control rules in its review.

During the term of this project, the Liaison Committee met five times, with each member hosting one meeting as follows:

October 1, 1991—Boston, MA  
January 13-14, 1992—Sacramento, CA  
March 17-18, 1992—Columbia, SC  
May 19-20, 1992—Santa Fe, NM  
August 17-19, 1992—Des Moines, IA

In the fall of 1991, the committee solicited input from the NAPSR members in their respective regions; a total of 48 state agencies plus the District of Columbia and the Commonwealth of Puerto Rico. Twenty-nine (29) agencies responded with 182 comments suggesting revisions covering 78 areas of Part 192.

The following exclusion criteria were applied to the suggestions. Suggestions were not taken up for review by the committee if:

(a) They involved issues already being addressed in an RSPA rulemaking or another NAPSR committee. No purpose was seen to duplicating efforts being made in other forums.

(b) They proposed substantive new requirements, as opposed to issues of clarity or enforceability. This committee was not seen as a proper forum for the proposal of significant new regulatory requirements or to address disagreements with current requirements. (For example, a suggestion that a test be required twice rather than once a year would not have been entertained, but a request that "periodic" be quantified would be.)

Application of these criteria and merging of duplicate submittals reduced to 49 the number of suggestions the

committee would pursue. As the meetings progressed, this number was gradually further reduced to the 20 items considered by the committee to have the highest priority, as requested by RSPA. The text accompanying each suggested rule change was drafted in a manner intended to assist in preparation by RSPA of a Notice of Proposed Rulemaking incorporating these items.

The committee also developed a list of 13 additional items that have been designated "Technical Corrections." These were incidental suggestions for improving part 192 that did not represent enforcement problems and were not priority items. These suggestions propose removal of old dates, eliminating conflicting language, minor language changes to improve clarity, etc. The committee decided that such suggestions could easily be noted and provided to RSPA as non-priority recommendations for "cleaning up" part 192.

Much of part 192 is written in performance language. Those committee proposals which would replace general performance language with more specific criteria should not be taken as dissatisfaction by NAPSR with that concept. Rather, they represent instances where experience by NAPSR members has shown the present rule provides insufficient guidance to operators on what constitutes safe and acceptable practice.

On August 31, 1992, RSPA published a Notice of Proposed Rulemaking in Docket PS-124 (57 FR 39572), which proposes various amendments to part 192 intended to reduce the economic impact of compliance with pipeline safety standards. Several of these proposed amendments address the same code sections and/or issues as the NAPSR committee. Since this was published after the final committee meeting, and no additional meetings have been scheduled, there is no opportunity to reconcile the committee's report with the new rulemaking. However, the following comments can be made. (These remarks mirror comments filed by Iowa in PS-124, and are therefore not an attempt at ex parte communication as they only repeat information already in the docket record.)

a. Several comments received by the committee alleged significant technical discrepancies between part 192 and industry standards for LPG facilities. This committee is recommending this issue be examined by a separate committee, preferably one comprised of NAPSR members with LPG expertise. One option that group would explore is whether regulations separate from part

192 should be adopted for LPG operators. PS-124 also proposes consideration of separate rules for LPG facilities. However, the rationale between the committee's and the PS-124 proposals are completely different and these are not duplicative proposals.

b. The committee and PS-124 propose differing modifications to the definition of a transmission pipeline in § 192.3. The committee prefers its version, as it addresses more of the past problems with that definition than does the docketed proposal.

c. The committee report recommends that the permissible levels of hydrogen sulfide in § 192.475 be stated in parts-per-million as well as in grains.

d. The committee supports the adoption of ASME B31G in part 192, but had proposed it be incorporated in a different manner than proposed in PS-124. A 1986 NAPSRS resolution proposing adoption of that standard was submitted to RSPA, but RSPA declined to act on this resolution, citing the availability of other valid methods, availability of the B31G methodology in other publications, and a RSPA policy of limiting the number of referenced standards. The NAPSRS committee recommendation was therefore written to refer to B31G in the applicable code section, rather than Appendix A.

The Liaison Committee believes that these proposed revisions and technical corrections to 49 CFR part 192 which are based on the comments received from the NAPSRS membership, addresses the concerns of the RSPA to clarify and improve the regulations.

Therefore, RSPA is urged to review this report and initiate rulemaking for the adoption of these recommendations.

Respectfully Submitted,  
Richard G. Marini,  
Chair, New Hampshire  
Donald Sturms, Iowa  
Jim Wait, California  
Albino Zuniga, New Mexico  
Carl Morse, South Carolina

#### § 192.3 Definitions.

Main means a distribution line that serves as a common source of supply for more than one service line.

Transmission line means a pipeline, other than a gathering line, that:

(a) Transports gas from a gathering line or storage facility to a distribution center or storage facility;

(b) Operates at a hoop stress of 20 percent or more of SMYS; or

(c) Transports gas within a storage field.

#### Problem

Despite numerous interpretations by the Office of Pipeline Safety (OPS) over the years, the determination of whether certain pipelines are transmission pipelines or mains has remained unclear for both operators and enforcement personnel. Of the three-part definition of "transmission line" in § 192.3, parts (b) and (c) are straightforward and have caused no significant difficulty; the problem lies in determining what additional pipelines are included under part (a).

#### Recommendation

It is recommended part (a) of the transmission line definition in § 192.3 be reworded as follows. This language is consistent with past Office of Pipeline Safety (OPS) interpretations of this section dated July 27, 1971; May 8, 1974; November 30, 1978; May 23, 1979 (#79-16); and February 14, 1990. Also, to further clarify the distinction between a transmission line and a main, it is recommended the ASME B31.8 definition of a main be adopted.

#### Modification

Revise the § 192.3 definitions of Main and Transmission Line to read:

Main means a pipeline installed in a community to convey gas to individual service lines or to other mains.

Transmission line means a pipeline, or a series of pipelines, other than a gathering line, that:

(a) Transports gas from a gathering line, storage field or another transmission line to a storage field or to one or more distribution systems or other load centers.

(b) & (c)—unchanged.

#### § 192.225 Welding—General.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified to produce welds meeting the requirements of this subpart. The quality of the test welds shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

#### Problem

This subpart does not require that the welding procedure used be developed and qualified in accordance with accepted industry practices such as American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), or other standards, thereby allowing the operator to use a

qualification procedure developed in-house and difficult to evaluate.

#### Recommendation

The addition of American Petroleum Institute (API) and American Society of Mechanical Engineers (ASME) references will better define appropriate standards for welding procedure qualification. The proposed changes will promote understanding between operators and enforcement personnel, assist in making this regulation more easily understood, and enhance consistency of welding procedure test methods.

#### Modification

Revise § 192.225(a) to read as follows:

(a) Welding must be performed by a qualified welder in accordance with procedures qualified under American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), or other standards to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.

#### § 192.241 Inspection and test of welds.

(a) Visual inspection of welding must be conducted to insure that:

(1) The welding is performed in accordance with the welding procedure; and

(2) The weld is acceptable under paragraph (c) of this section.

(b) The welds on a pipeline to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS must be nondestructively tested in accordance with § 192.243, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if:

(1) The pipe has a nominal diameter of less than 6 inches; or

(2) The pipeline is to be operated at a pressure that produces a hoop stress of less than 40 percent of SMYS and the welds are so limited in number that nondestructive testing is impractical.

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of American Petroleum Institute (API) Standard 1104.

#### Problem

§ 192.241(a) requires the visual inspection of all welds. The regulations do not set forth the required qualifications of the person making the visual inspection. This failure to specify the qualification of that person is an obvious shortcoming in the welding

regulations, because it would allow a casual visual review of welds by a non-qualified person. Moreover, this is not consistent with the requirements for inspecting the joining of plastic pipe (§ 192.287), which require a qualified inspector in all cases.

#### Recommendation

The consequences of a welded steel joint failure could be just as severe as a failure of a plastic pipe joint. Therefore, the inspector qualification requirements should be comparable.

#### Modification

Revise § 192.241 (a) to read as follows:

(a) Visual inspection of welding must be conducted, by an inspector qualified by appropriate training and experience, to insure that: \* \* \*

#### § 192.285 Plastic pipe; qualifying persons to make joints.

(a) No person may make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by:

(1) Appropriate training or experience in the use of the procedure; and

(2) Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and test set forth in paragraph (b) of this section.

(b) The specimen joint must be:

(1) Visually examined during and after assembly or joining and found to have the same appearance as a joint or photographs of a joint that is acceptable under the procedure; and

(2) In the case of a heat fusion, solvent cement, or adhesive joint:

(i) Tested under any one of the test methods listed under § 192.283(a) applicable to the type of joint and material being tested;

(ii) Examined by ultrasonic inspection and found not to contain flaws that would cause failure; or

(iii) Cut into at least 3 longitudinal straps, each of which is:

(A) Visually examined and found not to contain voids or discontinuities on the cut surfaces of the joint area; and

(B) Deformed by bending, torque, or impact, and if failure occurs, it must not initiate in the joint area.

(c) A person must be requalified under an applicable procedure, if during any 12-month period that person:

(1) Does not make any joints under that procedure; or

(2) Has 3 joints or 3 percent of the joints made, whichever, is greater, under that procedure that are found unacceptable by testing under § 192.513.

(d) Each operator shall establish a method to determine that each person

making joints in plastic pipelines in his system is qualified in accordance with this section.

#### Problem

Approximately 85% of the distribution piping installed in recent years has been polyethylene (PE) pipe. Yet the qualification requirements for persons joining plastic pipe are less stringent than for welders on comparable projects using steel pipe. Under the present requirements of § 192.285(c) a person who makes plastic pipe joints periodically, of sufficient quality that the joints withstand the pressure test required by § 192.513, need never retake a qualifying test. These requirements should be strengthened to insure that the joints are being made in full compliance with joining procedures proven to produce strong gastight joints with adequate long-term strength.

Further, a joiner is required by § 192.285(c)(2) to requalify if a certain number of inadequate joints fail during pressure testing, but there is no provision for retesting if poor quality joints are discovered by other means. A person would not be retested (and possibly precluded from further joining unless and until the test was passed) even if numerous poor quality production joints were found. Also, this section is not consistent with § 192.227, which requires a welder be periodically requalified regardless of the number of wells made. The consequences of a plastic pipe joint failure could be just as severe as a failure of a welded steel joint; therefore, the personnel qualification requirements should be comparable.

Iowa (1983, NTSB Report No. NTSB/PAR-84/02) and Kansas (1987, KCC Report No. 87-25) have both had major incidents which resulted from failure of "cold" fusion joints which had not been made in accordance with procedure. Improper qualification of joiners was not cited in either case, but these events show a need for periodic retesting to insure joiners know and follow proper procedure.

The present language of § 192.285(d) also requires that:

Each operator shall establish a method to determine that each person making joints in plastic pipe in his system is qualified in accordance with this section.

It appears this provision is intended to require that the operator monitor the activities of joiners, both its own and contractor employees, to insure they are properly qualified. However, the language lacks both the strength and specificity needed to insure that

operators properly monitor and verify that joiners are properly qualified and that their qualification is maintained. The lack of recordkeeping requirements in particular makes it difficult to obtain evidence needed for enforcement of joiner qualification requirements.

#### Recommendation

It is recommended § 192.285 (c) and (d) be amended to require periodic retesting of persons making plastic pipe joints, require qualification records be kept, and provide a means of requiring requalification of a person found to be making substandard production joints, and to make its joiner qualification requirements consistent with § 192.227.

#### Modification

Revise § 192.285 (c) and (d) to read as follows:

(c) A person must be requalified:

(1) In all applicable procedures, at least once each calendar year at intervals not exceeding 15 months; or

(2) In the applicable procedure if, since their last qualification test, 3 joints or 3 percent of the production joints made, whichever is greater, using that procedure are found unacceptable by testing under § 192.513, or which fail a test made according to the procedures of § 192.285(b)(2).

(d) Each operator shall establish a method to verify that each person making joints in plastic pipelines is and remains qualified in accordance with this section. This method shall include records of the procedures in use, joiner qualification tests and any failed production joints.

#### § 192.321 Installation of plastic pipe.

#### § 192.361 Service lines: Installation.

#### Problem

On January 8, 1992, in response to NAPSRS resolution (No. 1992-2-E-WV-P1), the Office of Pipeline Safety issued an Alert Notice (ALN-92-01) which documented three instances reported by NAPSRS members of lightning conducted through tracer wire damaging plastic pipe and causing it to leak. In all these instances, the tracer wire had been wrapped around the pipe at the time of installation. One of these incidents resulted in three fatalities and over \$50,000 in property damage. NAPSRS is also aware of other incidents in New Hampshire and South Carolina where leaks were caused by lightning conducted through tracer wire which was not wrapped around the plastic pipe, but was in contact with it at one or more places.

Section 192.321, "Installation of Plastic Pipe" requires in paragraph (e)

that "Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground." This rule does not prohibit contact between the pipe and tracer wire. In addition, this regulation is located in subpart G, which is only applicable to transmission lines and mains. There is no comparable requirement in subpart H to insure that service lines can be located. Section 192.361, "Service lines: Installation," is silent on this subject.

The American Gas Association (AGA), in its publication entitled "Plastic Pipe Manual for Gas Service," recommends a two to six inch separation between the pipe and tracer wire to reduce the risk of lightning damage. Although the Alert Notice mentions the American Gas Association (AGA) criteria, the notice is an advisory only, and does not constitute a requirement that plastic pipe and tracer wire not be in contact.

However, NAPSRS recognizes that there are situations where requiring a separation between the pipe and locating wire would be impractical. For example, in trenchless construction, such as at road crossings, the common practice is to run the pipe and wire through the same borehole or casing. Requiring a second borehole or casing for the tracer wire to insure separation would add substantially to installation costs.

NAPSRS also recognizes that tracer wires may be affected by corrosion. If the electrical continuity is lost due to corrosion, it cannot be used to locate the plastic pipe. It is becoming common practice for operators to connect anodes to these wires for protection from corrosion.

#### Recommendation

Section 192.321 should require that each gas operator using tracer wire to comply with § 192.321(e) lay the tracer wire with a separation from the pipe. The regulation should also recognize the impracticality of avoiding contact in all circumstances; and also provide for protection of the tracer wire, or any other metallic element used as a locating method, from corrosion.

Tracer wire, or other means of locating plastic pipe, should also be required for plastic service lines. An additional paragraph should be added to § 192.361 containing requirements for a means of locating similar to § 192.321(e).

#### Modification

Revise § 192.321(e) to read as follows:  
(e) Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe

while it is underground. Where practical, tracer wire or other metallic locating assists shall not be in contact with the pipe. Tracer wires, or other metallic elements installed for pipe locating purposes, shall be protected from corrosion.

And add a new paragraph § 192.361(g) reading as follows:

(g) Plastic service lines that are not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Where practical, tracer wire or other metallic locating assists shall not be in contact with the pipe. Tracer wires, or other metallic elements installed for pipe locating purposes, shall be protected from corrosion.

#### § 192.457 External corrosion control: Buried or submerged pipelines installed before August 1, 1971.

(a) Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating must be cathodically protected along the entire area that is effectively coated, in accordance with this subpart. For the purposes of this subpart, a pipeline does not have an effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine the cathodic protection current requirements.

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, must be cathodically protected in accordance with this subpart in areas in which active corrosion is found:

- (1) Bare or ineffectively coated transmission lines.
- (2) Bare or coated pipes at compressor, regulator, and measuring stations.

(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

(c) For the purpose of this subpart, active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

#### § 192.465 External corrosion control: Monitoring

##### Problem

Section 192.457(b)(3) requires that areas of active corrosion must be

determined on bare or coated distribution lines installed before August 1, 1971. Section 192.465(e) requires reevaluation of unprotected pipelines every three years for areas of active corrosion. Where practical, this must be done by electrical survey. Where electrical surveys are not practical, it must be done "by the study of corrosion and leak history records, by leak detection survey, or by other means." (Emphasis added)

The advantage of an electrical survey, and presumably therefore the preference given it in the rules, is that it is proactive. It is the only method which can anticipate where corrosion may occur, and permits corrective action to be taken before significant damage results. The alternative methods require first that corrosion actually occur, and second that the damage then be discovered. Such reactive tactics carry a risk that corrosion will create a hazard before its presence is determined.

However, there are many limitations on the use of electrical surveys. Such surveys require that numerous pipe-to-soil electrical potential readings be taken over the pipeline and the results analyzed to identify any areas where current is leaving the pipe and corrosion may be occurring. In many instances they are impractical because the necessary data cannot be obtained due to difficulties created by extensive paving, electrically discontinuous pipe, or electrical interference. Even if sufficient readings can be taken, their evaluation requires considerable expertise. NAPSRS is concerned that the necessary expertise is not always available, with operators not properly understanding how an electrical survey is to be conducted, and Subpart I provides little guidance. In contrast, § 192.455(b) provides very specific instructions for evaluating the corrosion potential on lines installed after July 31, 1971.

Further, the effort required to obtain and analyze these readings causes electrical surveys to be expensive; NAPSRS is aware of operators who have claimed such surveys are impractical on the basis of cost alone. In addition, the electrical survey method was originally developed for transmission lines, and the difficulty of its application to often much more complex distribution systems raises further concern about its reliability.

The language of §§ 192.457(b)(3) and 192.465(e) creates several problems. Due to the difficulty and expense of obtaining and analyzing electrical survey data, operators often would prefer to use alternative methods to evaluate their unprotected pipe.

Because "impractical" is not defined, there is frequent uncertainty and disagreement among both operators and enforcement agencies as to when alternative methods are permissible. Certain types of potentially useful alternative information are listed, but no guidance as to their anticipated source or method of analysis. Further, the word "or" in the regulations implies that any single alternative method is adequate, instead of requiring the operator to consider all available information. In contrast, the continuing surveillance requirement of § 192.613 requires the operator to evaluate the condition of pipe based on all known factors.

One other means which has been suggested to anticipate areas of active corrosion is to obtain soil resistivity data on the soil in which the unprotected pipe is buried. Such information may indeed be useful; however, there are practical concerns which must be considered. The soils in developed areas are likely to be widely varied due to numerous past fill and/or excavation activities, including use of imported material for fill or utility trench backfill. Soil resistivity surveys would therefore have to be detailed and subsequently expensive. In the locations they would provide the greatest benefit, they may be impractical for the same reasons electrical surveys are impractical. Where electrical surveys are not impeded, there appears little justification for requiring the expensive additional data. Therefore, a requirement that soil resistivity data be obtained is not proposed. However, that does not preclude its consideration where such information is available.

§ 192.465(e) requires unprotected pipe be re-evaluated at three year intervals, while leak surveys outside of principal business areas of distribution systems are only required by § 192.723(b)(2) to be made every five years. Depending how the two cycles synchronize, decisions on whether active corrosion is occurring could be made using leak data which is several years old. However, because this particular issue is being considered in RSPA Rulemaking Docket No. PS-123, it will not be pursued here.

#### Recommendation

NAPSR sees a need to clarify when alternatives to electrical surveys are permissible, to identify sources of data, and to require that all available information be used when alternative methods are permitted.

#### Modification

Revise § 192.457(b)(3) and § 192.465(e) to read as follows:

#### § 192.457 External corrosion control: Buried or submerged pipelines installed before August 1, 1971.

(b) \* \* \*

(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey; or where an electrical survey is impractical due to extensive paving, electrically discontinuous pipe, or electrical interference; by the study of all available information which may indicate the presence of corrosion, including leak survey (§§ 192.706 & .723) and leak history records, pipe coating and external condition examination records (§ 192.459), available soil resistivity data, and such pipe-to-soil readings as can be obtained. For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed by plotting or comparable means to identify any locations where a corrosive current is leaving the pipe.

#### § 192.465 External corrosion control: Monitoring.

(e) After the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, at intervals not exceeding 3 years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey; or where electrical survey is impractical due to extensive paving, electrically discontinuous pipe, or electrical interference; by the study of all available information which may indicate the presence of corrosion, including leak survey (§§ 192.706 & .723) and leak history records, pipe coating and external condition examination records (§ 192.459), available soil resistivity data, and such pipe-to-soil readings as can be obtained. For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed by plotting or comparable means to identify any locations where a corrosive current is leaving the pipe.

#### § 192.459 External corrosion control: Examination of buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external

corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraph of §§ 192.485, 192.487, or 192.489.

#### Problem

Some operators have misinterpreted this section, contending it is applicable only to pipelines that are bare or have deteriorated coating, and therefore § 192.491(b)(2) does not require an examination record be kept if the pipe was found with good coating. The lack of records on examination of coated pipe in good condition not only deprives both the operator and enforcement agencies of information on pipe and coating condition, but without such records there is no way to verify that exposed pipe is actually being examined as required by the section.

#### Recommendation

NAPSR believes this incorrect interpretation could be prevented if the section were clarified and a reference § 192.491(b)(2) added.

#### Modification

Revise § 192.459 to read as follows: Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined to determine the condition of the coating, or if the pipeline is bare or the coating is deteriorated, the exterior condition of the pipe. A record of the pipe and/or coating condition shall be made in accordance with § 192.491(b)(2). If external corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, and 192.489.

#### § 192.467 External corrosion control: Electrical isolation.

(a) Each buried or submerged pipeline must be electrically isolated from other underground metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

(b) One or more insulating devices must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control.

(c) Except for unprotected copper inserted in ferrous pipe, each pipeline must be electrically isolated from metallic casings that are a part of the underground system. However, if isolation is not achieved because it is impractical, other measures must be taken to minimize corrosion of the pipeline inside the casing.

(d) Inspection and electrical tests must be made to assure that electrical isolation is adequate.

(e) An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(f) Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices.

**§ 192.483 Remedial measures: General.**

*Problem*

Although § 192.467(c) generally states that each pipeline must be electrically isolated from metallic casings that are a part of the underground system, there is no specific requirement in the rule that casings be periodically tested for isolation, and § 192.467(d) gives no guidance regarding the frequency for tests for electrical isolation. This lack of clarity has caused some operators to fail to test pipeline casings for isolation, or to test at intervals not consistent with the other periodic cathodic protection test requirements of this subpart.

The rule also states that "if isolation is not achieved because it is impractical, other measures must be taken to minimize corrosion of the pipeline inside the casing." Office of Pipeline Safety (OPS) has developed an enforcement policy on what "other measures" are acceptable, and if only these specific remedial measures are acceptable then they should be made part of the rule. Specifying acceptable action in the regulation would also eliminate inappropriate practices which have been used by some operators, such as bonding of casings and carrier pipe in apparent misinterpretation of § 192.467(a).

*Recommendation*

Add provisions to § 192.467(d) requiring periodic testing of casings for electrical isolation and specify in § 192.483 permissible remedial actions if electrical contact is found.

*Modification*

Revise § 192.467(d) and add a new § 192.483(d) as follows:

**§ 192.467(d)**

Inspection and electrical tests must be made to assure electrical isolation is adequate. Each metallic casing must be tested each calendar year but at intervals not exceeding 15 months for possible electrical contact to the pipeline. Where contact between a

pipeline and a casing is found, remedial action shall be taken in accordance with § 192.483(d).

**§ 192.483(d)**

If it is determined that a casing is shorted to a pipeline the operator shall:

(1) Clear the short, if practical.

(2) Fill the casing with a high dielectric filler or other corrosion inhibiting material. The filler level in the casing shall be tested not less than once annually but at intervals not to exceed 15 months to determine whether the filler material is leaking from the casing.

(3) If (1) and (2) are impractical and the risk to the public from a corrosion leak would be minimal, the encased pipeline shall be monitored for leakage with leak detection equipment, at intervals not to exceed the requirements of § 192.706(b) or 192.723(b).

(4) In lieu of (1)–(3), conduct an inspection at intervals not exceeding five years with an internal inspection device capable of detecting external corrosion in the cased pipeline.

**§ 192.483 Remedial measures: General.**

(a) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion must have a properly prepared surface and must be provided with an external protective coating that meets the requirements of § 192.461.

(b) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion must be cathodically protected in accordance with this subpart.

(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe that is required to be repaired because of external corrosion must be cathodically protected in accordance with this subpart.

*Problem*

§ 192.487(a) requires replacement of steel pipelines with "generalized corrosion", unless the area of general corrosion is "small", in which case the pipe may be repaired. Section 192.487(a) does not define, describe nor limit what constitutes allowable "small areas" of corrosion which may be repaired. Not properly defining "small areas" often allows repair of corroded pipe sections which should be replaced. The present vague language sets up inevitable conflicts between pipeline operators, contractors, and regulators.

*Recommendation*

The Gas Piping Technology Committee (GPTC), in their "Guidelines

for Gas Transmission and Distribution Piping Systems", Appendices G6 through G8, provides specific criteria and procedures for evaluating the extent of corrosion damage. This criteria for determining the remaining strength of corroded pipe is also found in ASME Standards B31.4 and B31.8, and is published separately as B31G, "Manual for Determining the Remaining Strength of Corroded Pipelines".

These standards should be specifically referenced, and these types of calculations required in determining whether pipelines with corrosion must be replaced or may be merely repaired.

*Modification*

Revise § 192.483 to include (e) as follows (Note that the addition of (d) is proposed elsewhere):

(e) Appropriate guides and standards such as those published by American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI), and the Gas Piping Technology Committee (GPTC) shall be used in determining the remaining strength of pipelines with corrosion.

**§§ 192.505 and 192.507 Test Requirements (See also § 192.619(a)(2))**

**§ 192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS.**

(a) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more of SMYS must be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In addition, in a Class 1 or Class 2 location, if there is a building intended for human occupancy within 300 feet of a pipeline, a hydrostatic test must be conducted to a test pressure of at least 125 percent of maximum operating pressure on that segment of the pipeline within 300 feet of such a building, but in no event may the test section be less than 600 feet unless the length of the newly installed or relocated pipe is less than 600 feet. However, if the buildings are evacuated while the hoop stress exceeds 50 percent of SMYS, air or inert gas may be used as the test medium.

(b) In a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station, must be tested to at least Class 3 location test requirements.

(c) Except as provided in paragraph (e) of this section, the strength test must be conducted by maintaining the pressure at or above the test pressure for at least 8 hours.

(d) If a component other than pipe is the only item being replaced or added

to a pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that—

(1) The component was tested to at least the pressure required for the pipeline to which it is being added; or

(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

(e) For fabricated units and short sections of pipe, for which a post installation test is impractical, a preinstallation strength test must be conducted by maintaining the pressure at or above the test pressure for at least 4 hours.

**§ 192.507 Test requirements for pipelines to operate at a hoop stress less than 30 percent of SMYS and at or above 100 psig.**

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and at or above 100 psig must be tested in accordance with the following:

(a) The pipeline operator must use a test procedure that will ensure discovery of all potentially hazardous leaks in the segment being tested.

(b) If, during the test, the segment is to be stressed to 20 percent or more of SMYS and natural gas, inert gas, or air is the test medium—

(1) A leak test must be made at a pressure between 100 psig and the pressure required to produce a hoop stress of 20 percent of SMYS; or

(2) The line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS.

(c) The pressure must be maintained at or above the test pressure for at least 1 hour.

**Problem**

Section 192.505 contains strength test requirements for steel pipelines which will operate at a hoop stress over 30% SMYS, and § 192.507 contains the requirements for pipelines which will operate between 100 psig and 30% SMYS. Neither of these sections specifies the required minimum test pressure. Section 192.503(a)(1) states the test must be conducted in accordance with subpart J and § 192.619. However, this is not always sufficient to advise operators that they must refer to the Maximum Allowable Operating Pressure (MAOP) regulations of § 192.619 to obtain the required minimum test pressure. Errors of this type result in strength tests which do

not support the intended Maximum Allowable Operating Pressure (MAOP). Further, § 192.505 states pipelines to operate at 30% of SMYS or more must be tested in accordance with that section, an apparent conflict with § 192.503 and one which could be interpreted to make § 192.503(a)(1) inapplicable.

**Recommendation**

It is recommended § 192.505 and § 192.507 be amended to make specific reference to § 192.619(a)(2)(ii) as the source of the required minimum test pressure.

**Modification**

Revise § 192.505(a) and § 192.507 to read as follows:

**§ 192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS.**

(a) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more of SMYS must be strength tested in accordance with this section and with § 192.619(a)(2)(ii) to substantiate the proposed maximum allowable operating pressure.

**§ 192.507 Test requirements for pipelines to operate at a hoop stress less than 30 percent of SMYS and at or above 100 psig.**

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress of less than 30 percent of SMYS and at or above 100 psig must be tested in accordance with § 192.619(a)(2)(ii) and with the following:

**§ 192.509 Test requirements for pipelines to operate below 100 psig, and § 192.511 Test requirements for service lines (other than plastic)**

**§ 192.509 Test requirements for pipelines to operate below 100 psig**

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated below 100 psig must be leak tested in accordance with the following:

(a) The test procedure used must ensure discovery of all potentially hazardous leaks in the segment being tested.

(b) Each main that is to be operated at less than 1 psig must be tested to at least 10 psig and each main to be operated at or above 1 psig must be tested to at least 90 psig

**§ 192.511 Test requirements for service lines.**

(a) Each segment of a service line (other than plastic) must be leak tested in accordance with this section before

being placed in service. If feasible, the service-line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service.

(b) Each segment of a service line (other than plastic) intended to be operated at a pressure of at least 1 psig but not more than 40 psig must be given a leak test at a pressure of not less than 50 psig.

(c) Each segment of a service line (other than plastic) intended to be operated at pressures of more than 40 psig must be tested to at least 90 psig, except that each segment of a steel service line stressed to 20 percent or more of SMYS must be tested in accordance with § 192.507 of this subpart.

**Problem**

These two sections contain the test requirements applicable to the majority of non-plastic mains and service lines. There are frequent inconsistencies in these regulations. Mains and services are operated in common in a distribution system, but the test requirements for lines which would operate at the same pressure are not the same, and although the service line is the closest to the customer the test requirements are less stringent. There is a test requirement for low pressure mains but none for low pressure services. Further, the higher the proposed operating pressure, the lower the safety factor of the test pressure, until it is less than 1.0 for lines operating between 90 and 100 psig. In comparison, plastic lines (§ 192.513), and steel lines operating above 100 psig in the same urban (Class 3) environment (§§ 192.505 and 507), must be tested to at least 1.5 times the operating pressure.

**Recommendation**

No valid reason is known for these discrepancies in the code. Further, the lack of continuity and consistency compromises safety. It is recommended that §§ 192.509(b) and 192.511 (b) and (c) be amended to improve clarity and remove inconsistencies.

**Modification**

Revise §§ 192.509(b) and 192.511 (b) and (c) to read as follows:

**§ 192.509(b)**

Each main that is to be operated at less than 1 psig must be tested to at least 10 psig, and each main to be operated at or above 1 psig must be tested to 90 psig or 1.5 times the intended operating pressure, whichever produces the higher test pressure.



**§ 192.511(b)**

Each segment of a service line (other than plastic) that is to be operated at less than 1 psig must be tested to at least 10 psig, and each service line to be operated at or above 1 psig must be tested to 90 psig or 1.5 times the intended operating pressure, whichever produces the higher test pressure.

**§ 192.511(c)**

Each segment of a steel service line stressed at its intended operating pressure to 20% or more of SMYS must be tested in accordance with § 192.507 of this subpart.

**§ 192.517 Records.**

Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under §§ 192.505 and 192.507. The record must contain at least the following information:

(a) The operator's name, the name of the operator's employee responsible for making the test, and the name of any test company used.

(b) Test medium used.

(c) Test pressure.

(d) Test duration.

(e) Pressure recording charts, or other record of pressure readings.

(f) Elevation variations, whenever significant for the particular test.

(g) Leaks and failures noted and their disposition.

**Problem**

This regulation does not require retention of pressure test records under § 192.509 for pipelines to operate below 100 psig, under § 192.511 for service lines, or § 192.513 for plastic pipelines. The lack of appropriate records makes it impossible for the operator to demonstrate to enforcement personnel whether a pipeline has been properly tested and whether the Maximum Allowable Operating Pressure (MAOP) was properly established.

**Recommendation**

The regulation should require retention of pressure test records for pipelines tested under § 192.509 for pipelines to operate below 100 psig, § 192.511 for steel service lines, and § 192.513 for plastic pipelines. Including these additional requirements under § 192.517 will ensure that pipeline operators have documentation of the required pressure tests, and can verify that the pipelines were properly tested.

**Modification**

Revise § 192.517 to read as follows:

Each operator shall make, and retain for the useful life of the pipeline, a

record of each test performed under §§ 192.505, 192.507, 192.509, 192.511, and 192.513. The record must contain at least the following information:

(a) The operator's name, the name of the operator's employee responsible for making the test, and the name of any test company used.

(b) Test medium used.

(c) Test pressure.

(d) Test duration.

(e) Pressure recording charts, or other record of pressure readings.

(f) Elevation variations, whenever significant for the particular test.

(g) Leaks and failures noted and their disposition.

**§ 192.614 Damage prevention program.**

(a) Except for pipelines listed in paragraph (c) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. An operator may perform any of the duties required by paragraph (b) of this section through participation in a public service program, such as a "one-call" system, but such participation does not relieve the operator of responsibility for compliance with this section.

(b) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program:

(i) The program's existence and purpose; and

(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of

excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, and inspection must include leakage surveys.

(c) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines in a Class 1 or 2 location.

(2) Pipelines in a Class 3 location defined by § 192.5(d)(2) that are marked in accordance with § 192.707.

(3) Pipelines to which access is physically controlled by the operator.

(4) Pipelines that are part of a petroleum gas system subject to § 192.11 or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association.

**Problem**

The requirement in § 192.614(b)(2) that notification to the public and known excavators of the details of the operator's damage prevention program be made " \* \* \* as often as needed \* \* \*" leaves a great disparity amongst operators on time frames for notifications and does not give the enforcement personnel a limit for acceptability.

**Recommendation**

Establish a maximum time interval requirement for the notifications required by § 192.614(b)(2). To be consistent with other periodic requirements of Part 192, one year has been selected.

**Modification**

Revise § 192.614(b)(2) to read as follows: § 192.614(b)(2).

Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed but at least once each calendar year, at intervals not exceeding 15 months, to make them aware of the damage prevention program.

**§ 192.615 Emergency plans.**

(a) Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency. At a minimum, the procedures must provide for the following:

(1) Receiving, identifying, and classifying notices of events which require immediate response by the operator.

(2) Establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials.

(3) Prompt and effective response to a notice of each type of emergency, including the following:

(i) Gas detected inside or near a building.

(ii) Fire located near or directly involving a pipeline facility.

(iii) Explosion occurring near or directly involving a pipeline facility.

(iv) Natural disaster.

(4) The availability of personnel, equipment, tools, and materials, as needed at the scene of an emergency.

(5) Actions directed toward protecting people first and then property.

(6) Emergency shutdown and pressure reduction in any section of the operator's pipeline system necessary to minimize hazards to life or property.

(7) Making safe any actual or potential hazard to life or property.

(8) Notifying appropriate fire, police, and other public officials of gas pipeline emergencies and coordinating with them both planned responses and actual responses during an emergency.

(9) Safely restoring any service outage.

(10) Beginning action under § 192.617, if applicable, as soon after the end of the emergency as possible.

#### *Problem*

In § 192.615(a)(3)(i), it is unclear whether "detected" includes situations where the presence of gas is suspected but has not been confirmed, such as a report of a gas odor. NAPSRS is aware of operators who have not treated reports of gas odors as emergencies, contending that the present rule does not require emergency response to such reports. A report of a gas odor may indicate an emergency, therefore the regulations should clearly state that confirmation of the presence of gas is not a prerequisite for emergency response.

#### *Recommendation*

Revise § 192.615(a)(3)(i) to include a report of gas odor as an event to be treated as an emergency.

#### *Modification*

Revise § 192.615(a)(3)(i) to read as follows:

(i) Gas detected or a report of gas odor inside or near a building.

#### **§ 192.625 Odorization of gas.**

(a) A combustible gas in a distribution line must contain a natural odorant or

be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

(b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless:

(1) At least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

(2) The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975;

(i) An underground storage field;

(ii) A gas processing plant;

(iii) A gas dehydration plant; or

(iv) An industrial plant using gas in a process where the presence of an odorant:

(A) Makes the end product unfit for the purpose for which it is intended;

(B) Reduces the activity of a catalyst;

or

(C) Reduces the percentage completion of a chemical reaction; or

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location.

(c) In the concentrations in which it is used, the odorant in combustible gases must comply with the following:

(1) The odorant may not be deleterious to persons, materials, or pipe.

(2) The products of combustion from the odorant may not be toxic when breathed nor may they be corrosive or harmful to those materials to which the products of combustion will be exposed.

(d) The odorant may not be soluble in water to an extent greater than 2.5 parts to 100 parts by weight.

(e) Equipment for odorization must introduce the odorant without wide variations in the level of odorant.

(f) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section.

#### *Problem*

Section 192.625(a) requires that gas be odorized so that the gas is detectable by persons with a normal sense of smell at a concentration of  $\frac{1}{5}$  of the lower explosive limit. The rule does not specifically require the use of an instrument to determine the gas concentration. Some operators have relied strictly on "sniff tests", which can only determine if an odor is present, to determine if the odor is detectable. However, without an instrument, the concentration of gas in air cannot be measured, and compliance with the rule

cannot be determined. NAPSRS is aware of several National Transportation Safety Board (NTSB) reports where accidents occurred and the people in the area did not smell the gas.

In addition, § 192.625(f) provides no guidance on how often the adequacy of the odorant concentration must be tested. NAPSRS feels such tests must be made fairly frequently to insure the public safety, but is aware of operators whose Operating and Maintenance Plans call for such test as seldom as annually.

#### *Recommendation*

It is recommended § 192.625(f) be amended to establish a specific maximum sampling interval, and to specifically require use of an instrument capable of determining the percentage of gas in air when testing the adequacy of odorant concentration. Due to possible variances in odorization rates, NAPSRS believes it is necessary to require that sampling be done at least six times per year, at intervals not to exceed  $2\frac{1}{2}$  months.

#### *Modification*

Revise § 192.625(f) to read as follows:

(f) Each operator shall, at intervals not exceeding  $2\frac{1}{2}$  months but at least six times each calendar year or more often as necessary, conduct sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Sampling shall be done using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.

**§§ 192.739 Pressure limiting and regulating stations: Inspection and testing, and 192.743 Pressure limiting and regulating stations: Testing of relief devices.**

**§ 192.739 Pressure limiting and regulating stations: Inspection and testing.**

Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—

(a) In good mechanical condition;

(b) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(c) Set to function at the correct pressure; and

(d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

**§ 192.743 Pressure limiting and regulating stations: Testing of relief devices.**

(a) If feasible, pressure relief devices (except rupture discs) must be tested in place, at intervals not exceeding 15 months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to the desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station must be made at intervals not exceeding 15 months, but at least once each calendar year, and these required capacities compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works. After the initial calculations, subsequent calculations are not required if the review documents that parameters have not changed in a manner which would cause the capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device must be installed to provide the additional capacity required.

**Problem**

Section 192.739 requires an annual inspection of regulators and overpressure protection devices to determine, among other things, that they are "set to function at the correct pressure". The regulation contains no instruction or guidance on what is meant by the "correct pressure" or on how to determine whether a set point complies with Part 192 requirements. Section 192.743 requires the adequacy of relief device capacity be reverified annually, but contains undefined phrases such as "enough capacity", "desired maximum pressure", "relieving capacity", and "insufficient capacity" with no instruction or guidance on how compliance is to be achieved.

The information and instructions necessary for compliance with these regulations are found in two other areas of part 192: the Maximum Allowable Operating Pressure (MAOP) standards of §§ 192.619, .621, and .623 which limit the normal downstream pressure to the MAOP, and the standards limiting the amount of pressure increase permitted during the operation of overpressure protection devices in § 192.201. However, § 192.201 is in the design subpart, the Maximum Allowable Operating Pressure (MAOP) standards are in the operations subpart, and §§ 192.739 and .743 are in the

maintenance subpart. There is no clear connection or correlation between these areas of the regulations. As a result, operators frequently do not understand the limitations on set points or the relief capacity requirements imposed by part 192.

**Recommendation**

It is recommended that § 192.739(c) be amended to establish the applicability of the Maximum Allowable Operating Pressure (MAOP) regulations and of § 192.201 to determining "correct" set point pressures; and § 192.743 be amended to establish the applicability of § 192.201 to the adequacy of relief valve capacity.

**Modification**

Revise §§ 192.739(c) and 192.743(c) to read as follows:

**§ 192.739(c)**

Set to control or relieve at the correct pressures, and that the set points do not exceed the downstream Maximum Allowable Operating Pressure (MAOP) or the overpressure protection pressure limits of § 192.201.

**§ 192.743(c)**

If the relieving device is of insufficient capacity to comply with § 192.201, a new or additional device must be installed to provide the additional capacity required.

**§ 192.743 Pressure limiting and regulating stations: Testing of relief devices.**

(a) If feasible, pressure relief devices (except rupture discs) must be tested in place, at intervals not exceeding 15 months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to the desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station must be made at intervals not exceeding 15 months, but at least once each calendar year, and these required capacities compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works. After the initial calculations, subsequent calculations are not required if the review documents that parameters have not changed in a manner which would cause the capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device must be installed to provide the additional capacity required.

**Problem**

Section 192.743(a) states that, if feasible, relief devices must be tested in place. Section 192.743(b) allows the adequacy of relief devices to be checked by calculations, but only if an actual test is not feasible. In practice, the vast majority of annual relief capacity checks are done by computation. In-place testing has the disadvantages of the cost, noise, and potential safety hazard of the escaping gas, and is often perceived as wasteful.

There is no known controversy concerning the merits of using computations in lieu of in-place testing for determining the adequacy of relief valve capacity. In fact, calculations can consider circumstances which may not be readily subject to testing; for example, one manufacturer's method for computing the flow rate through a failed regulator assumes less orifice restriction than can be achieved in a normally functioning regulator during an in-place test.

No justification is seen for requiring an operator to first demonstrate that in-place testing is not feasible before the calculation method can be used.

**Recommendation**

It is recommended that the "feasible" language be removed from § 192.743, and both methods be considered equal alternatives. Due to the manner in which § 192.743 is written, this requires substantial revision of the language.

**Modification**

It is recommended § 192.743 (a) and (b) be revised as follows:

**§ 192.743(a)**

At intervals not exceeding 15 months, but at least once each calendar year, each pressure relief device at a pressure regulating station must either be tested in place (except rupture discs), or calculations must be made, to verify that it has sufficient capacity to limit the pressure on the facilities to which it is connected to within the overpressure protection limits of § 192.201.

**§ 192.743(b)**

If the adequacy of a relief device is evaluated by calculations, the required capacity must be compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works. After the initial calculations, subsequent calculations are not required if the annual review documents that parameters have not changed in a manner which would cause the capacity to be less than required.

**§ 192.745 Valve maintenance: Transmission lines.**

Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

**Problem**

The regulation requires each transmission line valve which is potentially needed during an emergency must be inspected and partially operated at a specified frequency.

The regulation does not specify what action should be taken if the valve does not operate properly. Obviously the valve should be repaired or replaced, but the rule contains no guidance on appropriate time limits. NAPSRS feels that since virtually any transmission line valve could prove crucial in an emergency, remedial action should be initiated immediately.

Also, the phrase "inspected and partially operated" is somewhat vague and subject to misinterpretation. The expectations of part 192 for the performance of transmission line valves are found in the valve design requirements of § 192.179. It requires valves be accessible and protected from stress, tampering, unauthorized operation, and damage. However, it is located in the design subpart, while the periodic inspection requirement is in the maintenance subpart. For consistency the maintenance regulation should require the valve continue to meet design requirements.

**Recommendation**

Section 192.745 should be revised to provide guidance on what should be covered during a valve inspection, and to require remedial action be initiated immediately if problems are found.

**Modification**

Revise § 192.745 to read as follows:

Each transmission valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year. Immediate remedial action shall be initiated on any valve found to be inoperable, inaccessible, improperly supported or subject to external loads or unusual stresses, or inadequately protected from unauthorized operation, tampering or damage.

**§ 192.747 Valve maintenance: Distribution systems.**

Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked

and serviced at intervals not exceeding 15 months, but at least one each calendar year.

**Problem**

The distribution valve maintenance regulations are vague and prevent a lack of common understanding between operators and enforcement personnel because: (1) There is no cross reference to the design requirements to specify the factors to be considered during a "check"; (2) there is no requirement for remedial action if problems are found; and (3) it is unclear which valves are covered by this regulation.

The design regulations under §§ 192.179(b), .181(c) and .199(b) require that valves be designed to be accessible, and be protected from stress, tampering, damage and unauthorized operation. However, the maintenance regulations under § 192.745 and § 192.747 only require that valves be checked and serviced each calendar year. They do not contain provisions to ensure that the requirements of the design standards continue to be met during the time the valve is in service. There is no requirement for corrective action if a valve is found to be inaccessible, inoperable or is unprotected from stress, damage or unauthorized operation.

NAPSRS is particularly concerned about the failure of the rule to require prompt remedial action if problems are found. Inoperable or inaccessible valves could have serious consequences in an emergency and warrant immediate repair.

Each operator's Emergency Plan should include instructions on which valves are to be operated if an emergency shutdown or pressure reduction of a pipeline is required (see § 192.615(a)(6)). NAPSRS believes these "emergency valves" are the ones the regulation is intended to cover, not necessarily every valve in the distribution system.

**Recommendation**

Section 192.747 should be revised to provide specific guidance on the conduct of valve "checks", require prompt corrective actions, and clarify which valves should be covered.

**Modification**

Revise Section 192.747 to read as follows:

(a) Each distribution line valve designated by an operator for use in an emergency must be inspected, partially operated and serviced at intervals not to exceed 15 months but at least once each calendar year.

(b) Immediate remedial action shall be initiated on any valve found to be inoperable, inaccessible, improperly supported, subjected to external loads or unusual stresses, inadequately protected from damage, tampering or unauthorized operation.

**Technical Corrections****§ 192.55 Steel pipe.**

192.55 (a) and (d) state the requirements for new steel pipe to be qualified for use in gas systems, including provisions for qualification of pipe manufactured before November 12, 1970. These parts of the rules were adopted in Amdt. 192-12 to make it clear that pipe manufactured before that date and meeting certain requirements could still be used.

That date is long past and it is improbable that any pipe manufactured before November 12, 1970 remains stockpiled and awaiting use as new steel pipe. It is recommended 192.55 be amended to delete these old dates, which complicate the rule but no longer have a practical benefit, by deleting 192.55(d) and amending 192.55(a)(2) to read as follows:

(2) It meets the requirements of Section II of Appendix B to this part.

**§ 192.65 Transportation of pipe.**

192.65 requires rail shipment of pipe be in compliance with the 1972 edition of API RP5L1, and also contains special provisions for pipe shipped before February 25, 1975, and special pressure test requirements for pipe shipped prior to November 12, 1970. The purpose of those dates was to permit use of pipe shipped prior to the effective dates of Amdts. 192-12 and 192-17.

Those dates are long past and it is improbable that any pipe shipped prior to those dates remains stockpiled and awaiting use. It is recommended 192.65 be amended as follows to delete old dates which complicate the rule but no longer have a practical benefit:

**§ 192.65 Transportation of pipe.**

In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless the transportation is performed in accordance with the 1972 edition of API RP5L1.

**§ 192.123 Design limitations for plastic pipe.**

192.123(b)(2) limits the operating temperature for thermoplastic pipe to the temperature at which its long-term hydrostatic strength was determined, but contains an exception allowing pipe

manufactured before May 18, 1978, to be operated at up to 100 degrees F. This exception was made in Amdt. 192-31 to "grandfather" pipe manufactured before the effective date of new plastic pipe standards.

May 18, 1978 is long past and it is improbable that any plastic pipe manufactured prior to that date remains stockpiled and awaiting use. It is recommended 192.123(b)(2) be amended to delete an old date which complicates the rule but no longer has a practical benefit: this could be accomplished by deleting the phrase "except that pipe manufactured before May 18, 1978 may be used at temperatures up to 38 °C (100 °F)" from the rule.

**§ 192.197 Control of the pressure of gas delivered from high-pressure distribution systems.**

192.197(a) states that for distribution systems operated at "less than 60 psig", if service regulators meet certain standards no other pressure limiting device is required. 192.197(b) states that if those criteria are not met, and the operating pressure is "60 psig or less", additional pressure control is required. 192.197(c) contains standards for control of customer delivery pressure when the operating pressure "exceeds 60 psig". There is therefore a 1 psig discrepancy between 192.197(a), and 192.197 (b) and (c).

It is recommended this discrepancy be eliminated by changing the "under 60 psig" in 192.197(a) to "60 psig or less".

**§ 192.203 Instrument, control, and sampling pipe and components.**

Section 192.203(b)(2) requires a shutoff valve be installed in each takeoff line as near as practicable to the point of takeoff. "Takeoff line" is not defined, and there has been uncertainty among operators over the scope of this regulation, especially over regulator control lines in regulator runs. It is recommended § 192.203(b)(2) be revised to read:

(2) A shutoff valve must be installed in each instrument, control, and sampling line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

**§ 192.311 Repair of plastic pipe.**

This section requires that plastic pipe imperfections or damage be repaired by a "patching saddle" or removed. No one seems certain what a patching saddle is. NAPSRS is aware of a device used by some operators for temporary repairs which is sold as a patching saddle, but it is actually a type of leak clamp; the misleading name was apparently

adopted due to the language of this rule. NAPSRS has also seen advertisements for a hot-air repair method, and has heard that an epoxy-type repair material is being developed, but such methods would apparently not be permitted by the language of this section.

If Part 192 is to allow repair of plastic pipe, no reason is seen why repair methods should be limited to patching saddles, nor is the meaning of that term clear. It is recommended the phrase "by a patching saddle" be deleted from the section.

**§ 192.353 Customer meters and regulators: Location.**

Damage to meter sets by vehicles is a frequent cause of leaks and incidents. 192.353(a) requires that meters and service regulators be "protected from corrosion or other damage." This can readily be interpreted to include vehicular damage; however, it does not specifically require vehicular damage be considered. Due to the lack of specific language, when a damaged meter, or an unprotected meter set in an exposed location, is encountered, the applicability of this regulation is unclear.

It is recommended that 192.353(a) be revised to read:

(a) Each meter and service regulator, whether installed inside or outside a building, must be installed in a readily accessible location and be protected from corrosion, vehicular, or other damage.

**§ 192.475 Internal corrosion control: General.**

192.475(e) states "Gas containing more than 0.1 grain of hydrogen sulfide per 100 cubic feet may not be stored in pipe-type or bottle-type holders." While the use of "grains" to quantify minor gas components continues, parts-per-million (ppm) is also commonly used and may be more commonly understood. (Note much of the discussion in RSPA Rulemaking Docket PS-106 concerning allowable hydrogen sulfide levels is in ppm.)

It is recommended that the permissible level of hydrogen sulfide be stated in both grains and parts-per-million.

**§ 192.479 Atmospheric corrosion control: General.**

192.497(b) gave operators until August 1, 1971, to make an initial examination of exposed pipe for atmospheric corrosion and to take corrective action as needed. That deadline is long past, and the dates no longer serve a useful purpose and make the regulation unnecessarily wordy and confusing. In addition, the wording of

the regulation appears to assume that atmospheric corrosion requiring remedial action will not be found on pipe installed after July 31, 1971. Further, as worded the regulation does not apply to a pipeline section which was not installed aboveground but which has since become exposed.

It is recommended that 192.479 be amended to eliminate the unnecessary dates, and make the remedial action requirements applicable to all exposed pipe regardless of the date or original type of installation. Suggested wording is:

**§ 192.479 Atmospheric corrosion control: General.**

(a) Each aboveground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) If atmospheric corrosion is found on an aboveground pipeline or portion of a pipeline, the operator shall—

(1) Take prompt remedial action to the extent required by the applicable paragraphs of §§ 192.485, 192.487, or 192.489; and

(2) Clean and either coat or jacket the areas of atmospheric corrosion with a material suitable for the prevention of atmospheric corrosion.

**§ 192.489 Remedial measures: Cast iron and ductile iron pipelines.**

Section 192.489(b) requires that if leakage may result from localized pipe graphitization, the pipe must be replaced, repaired, or sealed by internal sealing methods to prevent or arrest leakage. Leaks caused by graphitization would occur due to brittle failure of the weakened pipe, and the wording of the regulation appears to imply that internal sealing methods would strengthen the pipe. To prevent such misinterpretation, it is suggested the following language be added to § 192.489(b):

However, internal sealing shall not be considered a method of strengthening graphitized pipe.

**§ 192.553 Upgrading: General requirements.**

Unless Subpart K is read with great care, 192.557 can easily be misinterpreted as permitting the Maximum Allowable Operating Pressure to be increased without regard for whether the proposed MAOP is supported by pressure testing. For pipelines to be operated above 30% of

SMYS, the relevance of previous pressure tests is clearly stated in 192.555(c), but there is no comparable language applicable to pipelines to operate below 30% of SMYS in 192.557. Another difficulty to consider is that since Subpart K does not require test records be kept for pipelines operated below 100 psig, there may be no record of prior tests to facilitate uprating of service lines or non-steel pipelines. There is also wording in 192.557(c) which is inconsistent with other rule sections. It is recommended the following changes be made to clarify the requirements for uprating pipelines to be operated at less than 30% of SMYS and for non-steel pipelines:

**§ 192.553 General requirements.**

(d) Limitation on increase in maximum allowable operating pressure. Except as provided in § 192.555(c) and .557.c(1), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under § 192.619 and .621 for a new segment of pipeline constructed of the same materials in the same location and tested in compliance with § 192.619(a)(2).

**§ 192.557 Uprating: Steel pipelines to a pressure that will produce a hoop stress less than 30% of SMYS: plastic, cast iron, and ductile iron pipelines.**

(c) After complying with paragraph (b) of this section:

(1) An operator may increase the maximum allowable operating pressure

of a segment of pipeline constructed before September 12, 1970, to the highest pressure that is permitted under § 192.619 and .621, using as test pressure the highest pressure to which the segment of pipeline was previously subjected (either in a strength test or in actual operation); or, for any pipeline operated at less than 100 psig and for which no test record was kept, the test pressure specified in the operator's procedures at the time of installation.

(2) The increase in operating pressure must be made in increments that are equal to 10 p.s.i.g. or 25 percent of the total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of paragraph (b)(6) of this section apply, there must be at least two approximately equal incremental increases.

**§ 192.607 Initial determination of class location and confirmation or establishment of maximum allowable operating pressure.**

When 49 CFR Part 192 was first adopted, this rule required an initial determination of the class location of each pipeline having a hoop stress exceeding 40% of SMYS at its MAOP, comparison of its hoop stress to that permitted for that class location, and confirmation or revision of the MAOP as required. All action required by this rule was to be completed by December 31, 1974.

The deadline for action is long past, and there is no longer any purpose for an initial compliance period for these purposes. It is proposed that the outdated dates and instructions in this

rule be deleted, and that the amended rule address only the continuing need for operators to know the class location of these lines and whether their stress level is appropriate for the class location. The following language is suggested:

**§ 192.607 Determination of class location and confirmation of maximum allowable operating pressure.**

For each segment of pipeline with a maximum allowable operating pressure that will produce a hoop stress of more than 40 percent of SMYS, each operator shall determine—

(a) The class location of all such pipeline in its system; and

(b) Whether the hoop stress corresponding to the maximum allowable operating pressure for each segment of pipeline is commensurate with its class location.

**§ 192.753 Caulked bell and spigot joints.**

There is a conflict between § 192.621(a)(3), which allows a pressure of up to 25 p.s.i.g. in cast iron pipe with unreinforced bell and spigot joints; and § 192.753(a), which states that each cast iron bell and spigot joint subject to pressures of 25 p.s.i.g. or more must be sealed. It is recommended the discrepancy be removed by revising § 192.753(a) to read:

(a) Each cast-iron caulked bell and spigot joint that is subject to pressures of more than 25 p.s.i.g. must be sealed:

[FR Doc. 93-27492 Filed 11-8-93; 8:45 am]  
BILLING CODE 4910-60-P

# Notices

Federal Register

Vol. 58, No. 215

Tuesday, November 9, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Processes; Notice of Public Meeting

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States.

**DATES:** Thursday, November 18, 1993, from 2 p.m. to 5 p.m.

**ADDRESSES:** Office of the Chairman, Administrative Conference of the United States, suite 500, 2120 L Street, NW., Washington, DC (Library, 5th Floor).

**FOR FURTHER INFORMATION CONTACT:** Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC Telephone: (202) 254-7020.

**SUPPLEMENTARY INFORMATION:** The Committee will meet to begin discussion of a new study by Arnold Leibowitz on the Immigration and Naturalization Service, the Customs Service, and other agencies' asset forfeiture, remission and mitigation procedures. The Committee will also continue deliberation on issues relating to the right to consult with counsel in agency investigations, based upon an underlying study by Professor Ronald F. Wright, Wake Forest University School of Law. Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should call the Office of the Chairman of the Administrative Conference at least one day in advance of the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee

before, during, or after the meeting. Minutes of the meeting will be available upon request.

Dated: November 3, 1993.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 93-27508 Filed 11-8-93; 8:45 am]

**BILLING CODE 6110-01-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### National Genetic Resources Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463), the Agricultural Research Service announces the following meeting:

**Name:** National Genetic Resources Advisory Council.

**Date:** December 15-16, 1993.

**Time:** 9 a.m.-5 p.m., December 15, 1993, 9 a.m.-5 p.m., December 16, 1993.

**Place:** USDA, Administration Bldg., Room 104A (Williamsburg Room), 14th & Jefferson Drive, SW., Washington, DC 20250.

**Type of Meeting:** Open to the public.

Persons may participate in the meeting as time and space permits.

**Comments:** The public may file written comments before or after the meeting with the contact person below.

**Purpose:** To advance the development of the National Genetic Resources Program.

**Contact Person:** Henry L. Shands, Associate Deputy Administrator, National Genetic Resources Program, Bldg. 005, room 215, BARC-West, Beltsville, MD 20705. Telephone: 301/504-5059.

Done at Beltsville, Maryland, this 22nd day of October 1993.

**Henry L. Shands,**

*Director, National Genetic Resources Program.*

[FR Doc. 93-27586 Filed 11-8-93; 8:45 am]

**BILLING CODE 3410-03-M**

### Cooperative State Research Service

#### Agricultural Science and Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

**Name:** Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

**Date:** December 9-10, 1993.

**Time:** December 9-8:30 a.m.-5:30 p.m. December 10-8:30 a.m.-3 p.m.

**Place:** U.S. Department of Agriculture, 14th & Independence Avenue, SW. South Building, room 3109, Washington, DC 20250.

**Type of Meeting:** Open to the public.

Persons may participate in the meeting as time and space permit.

**Comments:** The public may file written comments before or after the meeting with the contact person named below.

**Purpose:** To plan a Spring 1994 workshop on Technology Assessment and to approve the final draft of the Board's 1993 Technology Assessment Report.

**Contact Person for Agenda and More Information:** Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, Room 432-A Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2255; Telephone (202) 720-3684.

Done in Washington, DC, this 26th day of October 1993.

**John Patrick Jordan,**

*Administrator.*

[FR Doc. 93-27587 Filed 11-8-93; 8:45 am]

**BILLING CODE 3410-22-M**

### Forest Service

#### Establishment of Boundaries for the Little Missouri River and Cossatot River, National Wild and Scenic Rivers, Ouachita National Forest, Montgomery, Pike and Polk Counties, AR

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of boundary establishment.

**SUMMARY:** The final boundaries for the Little Missouri and Cossatot National Wild and Scenic Rivers have been transmitted to Congress.

**EFFECTIVE DATE:** These boundaries will become effective on February 2, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Mike Curran, Forest Supervisor, Ouachita National Forest, Box 1270, Federal Building, Hot Springs, AR 71902, telephone 501-321-5200.

**SUPPLEMENTARY INFORMATION:** Public Law 102-275, enacted April 22, 1992, designated 15.7 miles of the Little Missouri River and 15.5 miles of the Cossatot River as components of the National Wild and Scenic Rivers System to be administered by the Secretary of Agriculture. The final delineation of the

river corridor boundaries, has been approved by the Regional Forester and was transmitted to Congress on November 2, 1993. Unless changed by Congress, the boundaries will become final February 2, 1994.

The Little Missouri and Cossatot National Wild and Scenic River boundary descriptions and associated maps are available for review at the following offices: Recreation, Heritage, and Wilderness Management, USDA-Forest Service, 201 14th Street SW., Washington, DC 20090-6090; Lands Staff, Southern Regional Office, 1720 Peachtree Road NW., Atlanta, GA 30367; and the Ouachita National Forest, Box 1270, Federal Building, Hot Springs, AR 71902.

Dated: November 2, 1993.

**James C. Overbay,**  
Deputy Chief.

[FR Doc. 93-27469 Filed 11-8-93; 8:45 am]  
BILLING CODE 3410-11-M

## National Agricultural Statistics Service

### Cattle on Feed Survey Changes

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to make some changes to the content of the Cattle on Feed reports beginning in 1994.

**FOR FURTHER INFORMATION CONTACT:**

Questions or comments on this proposal should be sent to Bill Pratt, Chief, Livestock, Dairy, and Poultry Branch, USDA/NASS, room 5906, South Building, Washington, DC 20250; telephone (202) 720-6146 within 30 days of this notice.

**SUPPLEMENTARY INFORMATION:** Quarterly weight group estimates of steers and heifers on feed and expected marketings will be discontinued. Feeders have difficulty estimating the weight group and expected marketings data and an increasing number of feedlots do not report these data items. In addition, overall response rates to the Cattle on Feed Survey have been declining due to respondent burden and reporting difficulties. Representatives of the feeding industry stressed the importance of maintaining accurate and timely inventory, marketings, and placements data rather than continuing weight group estimates based on a limited number of responses. Weight group estimates and expected marketings have not provided reliable projections of future slaughter.

Separate estimates of cattle on feed inventory, placements, marketings, and other disappearance will be reported for all feedlots with 1,000 head or more capacity, in addition to the totals for all feedlots in the 7 and 13 States. The July cattle on feed inventory estimate will be expanded to include a combined total of cattle on feed outside the 13 major States and a U.S. total.

Estimates of steers, heifers, and cows on feed will continue to be published in the quarterly report and estimates of steers, heifers, and cows on feed in lots with 1,000 head or more capacity will also be reported. The historic estimates of inventory, placements, marketings, other disappearance, and steers, heifers, and cows on feed in lots with 1,000 head capacity or more during 1992 and 1993 will be published in early 1994.

Done in Washington, DC, this 3rd day of November 1993.

**Donald M. Bay,**  
Acting Administrator.

[FR Doc. 93-27467 Filed 11-8-93; 8:45 am]  
BILLING CODE 3410-20-P

## ARCTIC RESEARCH COMMISSION

### Arctic Research Commission

November 3, 1993.

Notice is hereby given that the Arctic Research Commission will hold its 33rd Meeting in Arlington, VA, on December 7-8, 1993. On Tuesday, December 7, 1993, a Business Session open to the public will convene at 9 a.m. in room 370, National Science Foundation, 4201 Wilson Boulevard (Wilson Boulevard at Stafford Street) in Arlington, Virginia. Agenda items include: (1) Chairman's Report; (2) Status of Review of U.S. Arctic Policy; (3) Status and Direction of Polar Programs; (4) Science Submarine—Results and Plans; (6) Trade-offs in Arctic Oil and Gas Decisions; and (7) Arctic Monitoring and Assessment. On Wednesday, December 8, the Business Session will reconvene at 9 a.m. Agenda items for this session include (1) National Biological Survey and Arctic Research; (2) Discussion of Options for Reviewing Research Priorities; and (3) Other Business. An Executive Session for Members of the Commission will be held following the Business Session on December 8.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information:  
Philip L. Johnson, Executive Director,

U.S. Arctic Research Commission, 703-525-0111 or TDD 703-306-0090.

**Philip L. Johnson,**

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 93-27458 Filed 11-8-93; 8:45 am]  
BILLING CODE 7555-01-M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 10 a.m. until 4 p.m. on Friday, December 3, 1993, at the Westin Hotel, 50 South Capitol Avenue, Indianapolis, Indiana 46204. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hollis E. Hughes, 219-233-9305 or Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311 (TDD 312-353-8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 1, 1993.

**Carol-Lee Hurley,**

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-27455 Filed 11-8-93; 8:45 am]  
BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 10 a.m. until 4 p.m. on Thursday, December 2, 1993, at the Omni International Hotel, 333 East Jefferson Avenue, Detroit, Michigan 48226. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact



Committee Chairperson Janice G. Frazier, 313-259-8180 or Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311, (TDD 312-353-8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 1, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93-27456 Filed 11-8-93; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

[Docket No. 931089-3289]

#### Service Annual Survey

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** In accordance with title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1993 service sector data on receipts and revenue are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected service industries include personal, business, automotive, repair, amusement, health, other professional, and social service industries. This survey will yield 1993 estimates of the dollar volume of receipts for taxable firms and revenue of firms and organizations exempt from Federal income taxes. These data are not publicly available from nongovernment or other governmental sources.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 763-5528.

**SUPPLEMENTARY INFORMATION:** The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on selected service industries. The data collected in the Service Annual Survey will be within the general scope and nature of those inquiries covered in the economic

censuses. The Census Bureau will select a probability sample of service firms and organizations in the United States (with receipts or revenue size determining the probability of selection) to report in the 1993 Service Annual Survey. The sample will provide, with measurable reliability, national level statistics on receipts and revenue for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey is cleared under Office of Management and Budget Control No. 0607-0422 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 3, 1993.

**Harry A. Scarr,**

*Acting Director, Bureau of the Census.*

[FR Doc. 93-27544 Filed 11-8-93; 8:45 am]

BILLING CODE 3510-07-P

### Bureau of Export Administration

#### Action Affecting Export Privileges; Instrubel, N.V. and OIP, N.V.; Order Modifying Order Denying Permission to Apply for or Use Export Licenses

In the Matter of: Instrubel, N.V., Westerring 19, B-9700 Oudenaarde, Belgium; and OIP, N.V., Westerring 21, B-9700 Oudenaarde, Belgium.

On August 4, 1992, Iain S. Baird, Director, Office of Export Licensing, issued an order denying Instrubel, N.V. and OIP, N.V. permission to apply for or use, for a period of seven years, any export license, including any general license, issued pursuant to, or provided by, the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (1991, Supp. 1993 and Pub. L. 103-10, March 27, 1993)) ("the Act"), and the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1993)) ("the Regulations"). That action was taken against Instrubel, N.V. and OIP, N.V. as persons related to Delft Instruments, N.V., a party convicted for violating the Arms Export Control Act (22 U.S.C. 2778), through affiliation, ownership, control, or position of responsibility, and as the Delft subsidiaries directly involved in the activity leading to the conviction.

Instrubel, N.V. and OIP, N.V. have asked that the August 4, 1992 order be

modified so as to permit the two companies to engage in certain export-related transactions involving U.S.-origin commodities, software, and technology.<sup>1</sup> I have consulted with the Acting Director, Office of Export Enforcement, and have decided to grant, in part, the request to modify the August 4, 1992 order so as to permit Instrubel, N.V. and OIP, N.V. to engage in export-related transactions involving U.S.-origin commodities, software, and technology that may be exported to Belgium pursuant to General License G-DEST (15 CFR 771.3) and General License GTDU (15 CFR 779.4(b)(4)).

This action will enable the companies to acquire a majority of the U.S.-origin commodities, software, and technology essential to the vital work that the companies do for NATO and allied forces, while reducing the administrative burden that is entailed in processing requests for exceptions to the August 4, 1992 order. At the same time, the purposes of section 11(h) of the Act will be served by continuing to deny to Instrubel, N.V. and OIP, N.V. all other U.S. export privileges based on their involvement in and responsibility for the actions that led to the conviction of Delft, N.V., their parent company, for violating the Arms Export Control Act. Instrubel, N.V. and OIP, N.V. may continue to apply for exceptions to this order pursuant to § 787.12 of the Regulations. Exception requests will be considered on a case-by-case basis.

Accordingly, the order denying permission to apply for or use export licenses entered against Instrubel, N.V. and OIP, N.V. on August 4, 1992 is modified to read as follows:

#### Ordered

I. All outstanding individual validated licenses in which either Instrubel, N.V. or OIP, N.V. appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Instrubel, N.V.'s and OIP, N.V.'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 17, 1999, Instrubel, N.V., Westerring 19, B-9700 Oudenaarde,

<sup>1</sup> Since the issuance of the August 4, 1992 order, OIP, N.V. has submitted numerous requests for exceptions to the order, pursuant to Section 787.12 of the Regulations. These exception requests, which for the most part have been requests to authorize OIP, N.V. to receive or reexport General License G-DEST commodities, have been considered on a case-by-case basis. The majority of them have been approved.

Belgium, and OIP, N.V., Westerring 21, B-9700 Oudenaarde, Belgium, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported to or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, and of these transactions.

IV. Notwithstanding any other provision of this order, Instrubel, N.V., Westerring 19, B-9700 Oudenaarde, Belgium, and OIP, N.V., Westerring 21,

B-9700 Oudenaarde, Belgium, may engage, directly or indirectly, in any transaction in the United States or abroad involving any commodity, software, or technology exported or to be exported from the United States to Belgium under General License G-DEST or General License GTDU.

V. This order is effective immediately and shall remain in effect until July 17, 1999.

VI. A copy of this order shall be delivered to Instrubel, N.V. and OIP, N.V. This Order shall be published in the **Federal Register**.

Dated: October 28, 1993.

**Eileen M. Albanese,**

*Acting Director, Office of Export Licensing.*

[FR Doc. 93-27457 Filed 11-8-93; 8:45 am]

BILLING CODE 3510-DT-M

### International Trade Administration, Commerce

#### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 93-00002.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to Northwest Blueberries USA, Inc. ("NWB"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, 202-482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Certified Conduct

##### 1. *Export trade.*

1.1 *Products.* Fresh cultivated blueberries.

1.2 *Export trade facilitation services (as they relate to the export of products).* Consulting, market research, advertising, marketing, insurance, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of orders, warehousing, foreign exchange, financing, and taking title to goods.

2. *Export Markets.* The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

3. *Export trade activities and methods of operation.*

3.1 *Activities and operations.*

(1) NWB and/or one or more Members may:

a. determine with respect to specific export sales transactions the quantity of Products to be sold or available for sale by each Member;

b. set guidelines to govern all export sales negotiations, terms of export sales (including freight, insurance, financing, and payment), and export sales of the Products;

c. collect information on the Export Markets to assist Members in determining the market price of the Products in the Export Markets;

d. establish marketing strategies to facilitate export sales; and

e. process export orders on behalf of Members.

(2) NWB will serve as the Members' exclusive sales representative in the Export Markets, and deal exclusively in Products produced by the Members.

(3) NWB may provide Export Trade Facilitation Services to assist Members export the Products.

3.2 *Information exchange.*

NWB and/or one or more Members may exchange and discuss the following types of information:

a. Market research, advertising, and promotion in the Export Markets;

b. Costs specific to exporting Products to the Export Markets, including costs related to transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales documentation, financing, customs, duties, and taxes;

c. Legislation and regulations affecting sales of the Products in the Export Markets, including applicable licensing and other trade documentation requirements;

d. Common marking and identification;

e. Legal assistance, foreign exchange, and taking title to Members' Products;

f. Contract and spot pricing in the Export Markets, including prices and availability of the Products or other berries and berry products in the Export Markets;

g. Customary terms of sale in the Export Markets and specifications from customers;

h. Past export prices for Members' Products; and

i. Efforts and activities undertaken by NWB on behalf of Members in connection with the export of the Products to the Export Markets.

#### 4. Members.

In accordance with § 325.2(1) of the Regulations, "Members" means:

Oregon Onions, Inc., PO Box 9187,  
Brooks, OR 97305.

Hurst Berry Farm, Inc., 23301 SW  
McKibben Road, Sheridan, OR 97378.

Pacific Harvest, Inc., 26022 NE

Butteville Road, Aurora, OR 97002.  
Gingerich Farms, 10765 Barnards Road,  
Canby, OR 97013.

#### 5. Terms and conditions of certificate.

5.1 Except as expressly authorized in paragraph 3.2(b), in engaging in the Export Trade Activities and Methods of Operation neither NWB nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information concerning its own or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

5.2 Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member. A Member may withdraw from coverage under this Certificate at any time by giving written notice to NWB, a copy of which NWB shall promptly transmit to the Secretary of Commerce, to the attention of the Office of Export Trading Company Affairs.

5.3 NWB and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request

such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

6. *Protection provided by certificate.* This certificate protects NWB and its Members, any joint ventures or other jointly owned entities formed and operated by NWB and/or its Members, and any directors, officers, and employees acting on their behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

7. *Effective period of certificate.* This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

8. *Other conduct.* Nothing in this Certificate prohibits NWB and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

9. *Disclaimer.* The issuance of this Certificate of Review to NWB by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of NWB or its Members, or (b) the legality of such business plans of NWB or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V(D) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review is hereby granted to NWB.

A copy of each certificate will be kept in the International Trade Administration's Freedom of

Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: November 2, 1993.

Josephine Ludolph,

Deputy Assistant Secretary for Service  
Industries and Finance.

[FR Doc. 93-27598 Filed 11-8-93; 8:45 am]

BILLING CODE 3510-DR-P

### United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of completion of Binational Panel Review under U.S.-Canada Free Trade Agreement.

**SUMMARY:** By a decision dated September 28, 1993, a Binational Panel affirmed the final determination on remand made by The Deputy Minister for National Revenue (Customs and Excise), regarding Certain Machine Tufted Carpeting Originating in or Exported from the United States of America (Secretariat File No. CDA-92-1904-01). The panel review is completed and the panelists discharged from their duties effective on October 29, 1993. A copy of the complete panel decision is available from the Binational Secretariat.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for*

**Article 1904 Binational Panel Reviews ("Rules").** These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

#### Background

On April 29, 1992, a Request for Panel Review of the final determination of dumping made by the Deputy Minister for National Revenue (Customs and Excise) was filed by Wunderweave Carpets Inc. with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada-Free Trade Agreement. The panel rendered a decision on May 19, 1993 (Canada Gazette, Part I, Vol. 127, No. 23), which affirmed in part and remanded in part the investigating authority's final determination.

On June 30, 1993, the investigating authority filed its Determination on Remand. The Carpet and Rug Institute and Shaw Industries Inc. requested review of the Determination on Remand, under Rule 75 of the Rules.

The panel rendered a decision on remand on September 28, 1993, which affirmed the investigating authority's determination on remand.

No request for an extraordinary challenge committee was filed with the responsible Secretary. Therefore, pursuant to Rule 80(d) of the Article 1904 Panel Rules, this Notice of Completion of Panel Review is effective on October 29, 1993.

Dated: November 2, 1993.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 93-27581 Filed 11-8-93; 8:45 am]

BILLING CODE 3510-GT-M

#### Bureau of Export Administration

[Docket No. 931087-3287]

#### National Defense Stockpile Market Impact Committee Request for Public Comment

**AGENCY:** Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

**ACTION:** Notice of intent to dispose of excess commodities currently held in

the National Defense Stockpile under FY 1995 Annual Materials Plan, and request for public comments on the market impact of proposed disposals.

**SUMMARY:** The Strategic and Critical Materials Stock Piling Act states that materials in the stockpile may be released for use, sale, or other disposition. This notice is to advise the public that the National Defense Stockpile Market Impact Committee (cochaired by the Departments of Commerce and State) seeks comments from the public concerning the market impact of planned disposals of excess materials currently held in the National Defense Stockpile.

**DATES:** Comments must be received not later than December 9, 1993.

**ADDRESSES:** Written comments (10 copies) should be addressed to Brad Botwin; Stockpile Market Impact Committee; Office of Industrial Resource Administration; room 3878; U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Jeannette Dykes, Office of Industrial Resource Administration; U.S. Department of Commerce; (202) 482-3795 or Milt Drucker, Office of International Commodities, U.S. Department of State; (202) 647-2871 (Co-Chairs of the Stockpile Market Impact Committee).

**SUPPLEMENTARY INFORMATION:** The Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*) mandates that the Department of Defense (as National Defense Stockpile Manager) maintain an inventory of strategic and critical materials "to decrease and preclude, where possible, dependence by the United States upon foreign sources of supply in times of national emergency." Defense may dispose of materials in the stockpile that have previously been authorized for disposal by law and have been determined to be excess to national security requirements. In managing the stockpile, Defense must be fiscally responsible while at the same time "efforts shall be made \* \* \* to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials \* \* \* and to protect the United States against avoidable loss."

Section 3314 of the FY 1993 National Defense Authorization Act (NDAA) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and

disposals of materials from the National Defense Stockpile." The Committee includes representatives from the Department of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The Defense National Stockpile Center (DNSC) will proceed with caution in its proposal to dispose of the excess stockpile materials identified in the FY 1995 Annual Materials Plan (AMP). The Department of Defense and the Market Impact Committee will oversee disposals throughout the year to ensure minimal possible impact on commodity markets as a result of Stockpile disposals.

In order to protect the government against avoidable loss, the DNSC intends to exercise restraint regarding the quantities and timing of any offers of excess materials for sale.

The Committee will soon begin its consideration of DOD's FY 1995 AMP of proposed disposals and acquisitions of Stockpile materials. The following are the materials for which Defense has been granted disposal authority by Congress, and which therefore may be included in the FY 1995 AMP. In order for the Committee to obtain sufficient information to prepare its recommendations to Defense, the Committee hereby requests that interested parties provide comments on the potential market impact of the sale of commodities identified below.

#### Commodities Which May Be Included in FY 1995 AMP

##### Materials

Aluminum  
Aluminum Oxide, Abrasive  
Aluminum Oxide, Fused Crude  
Analgesics  
Antimony  
Asbestos (all types)  
Bauxite, Metallurgical (Jamaican)  
Bauxite, Metallurgical (Surinam)  
Bauxite, Refractory  
Beryl Ore  
Bismuth  
Cadmium  
Celestite  
Chromite, Chemical  
Chromite, Metallurgical  
Chromium, Ferro Alloys  
Cobalt  
Fluorspar, Acid Grade  
Fluorspar, Metallurgical  
Graphite, Natural Malagasy  
Graphite, Natural Other

Diamond Stone  
 Iodine  
 Lead  
 Manganese, Chemical Grade  
 Manganese, Battery Grade Natural  
 Manganese, Electrolytic  
 Manganese, Ferro Alloys  
 Manganese, Metallurgical Grade  
 Mercury  
 Mica, Muscovite Block  
 Mica, Muscovite Film  
 Mica, Muscovite Splittings  
 Mica, Phlogopite Splittings  
 Nickel  
 Quinidine  
 Quinidine, NSC  
 Quinine  
 Quartz Crystals, Natural  
 Rare Earths  
 Rutile  
 Sebacic Acid  
 Silicon Carbide  
 Silver (Coins)  
 Tin  
 Thorium Nitrate  
 Vanadium Pentoxide  
 VTE, Chestnut  
 VTE, Quebracho  
 Zinc

Your comments, in response to this notice, must be received by December 9, 1993 for the Committee to consider them in its evaluation of the FY 1995 AMP. Interested parties are invited to submit written comments, opinions, data, information, or any advice that would be useful to the Committee in reviewing proposed schedules and quantities of Stockpile sales. All materials should be submitted with 10 copies. As Stockpile sales proceed, the Committee welcomes further comments.

Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-5653. The records in this facility may be inspected and copied in accordance with the regulations

published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Mr. Alex Braier, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: November 3, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-27488 Filed 11-8-93; 8:45 am]  
 BILLING CODE 3510-DT-M

#### International Trade Administration

##### United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On October 19, 1993 Elkhart Products Corporation filed a First Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative dumping determination made pursuant to paragraph 41(a) of the Special Import Measures Act by the Deputy Minister of National Revenue for Customs and Excise respecting Certain Solder Joint Pipe Fittings Originating in or Exported from the States of America. This determination was published in the Canada Gazette on September 25, 1993. The Binational Secretariat has assigned Case Number CDA-93-1904-10 to this request.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to

act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the Federal Register on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the Federal Register on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on October 19, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 18, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 3, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 2, 1993.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 93-27580 Filed 11-8-93; 8:45 am]

BILLING CODE 3510-GT-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Colombia

November 3, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** November 10, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated October 15, 1993, between the Governments of the United States and the Republic of Colombia, agreement was reached to establish limits for wool textile products in Category 443 for the agreement periods May 1, 1993 through December 31, 1993, January 1, 1994 through December 31, 1994 and January 1, 1995 through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 443 for the period beginning on May 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 13058, published on March 9, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

November 3, 1993.

*Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to a Memorandum of Understanding dated October 15, 1993 between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 10, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in Colombia and exported during the eight-month period beginning on May 1, 1993 and extending through December 31, 1993, in excess of 80,000 numbers<sup>1</sup>.

Textile products in Category 443 which have been exported to the United States prior to May 1, 1993 shall not be subject to the limit established in this directive.

You are directed to retain the monitoring data for Category 443 (see directive dated March 4, 1993). This data shall be applied to the limit established in this directive. For goods exported prior to May 1, 1993, 19,013 numbers shall be deducted.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93-27579 Filed 11-8-93; 8:45 am]

BILLING CODE 3510-DR-F

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the C-141 Service Lifetime Extension

<sup>1</sup> The limit has not been adjusted to account for any imports exported after April 30, 1993.

Program will meet on 18-19 Nov 1993 from 8 a.m. to 5 p.m. at Warner Robins AFB, GA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to C-141. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 93-27459 Filed 11-8-93; 8:45 am]

BILLING CODE 3910-01-P

#### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Combat Mission Panel will meet on 8 Dec 1993 from 8 a.m. to 5 p.m. at Langley AFB, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Air Combat Command. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 93-27460 Filed 11-8-93; 8:45 am]

BILLING CODE 3910-01-P

## Department of the Army

### Prospective Exclusive License

**AGENCY:** U.S. Army Communications-Electronics Command, DOD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of the inventions identified in the Notice of Availability of Inventions for Licensing published in the Federal Register, 58 FR 49478 and 58 FR 52747.

**DATES:** Written objections to the granting of this exclusive license must be filed on or before January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Zelenka, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth,

NJ 07703-5010, telephone: (908) 532-44112.

**SUPPLEMENTARY INFORMATION:** The above mentioned inventions involve the generation and compression (detection) of spread spectrum multiplexed noise codes and applications of these codes in communications, switching and control systems. Rights to these inventions are owned by the United States Government, as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35 U.S. Code, the Department of the Army, as represented by the Communications-Electronics Command, intends to grant an exclusive license for the above mentioned United States Patents to the following entity: Hiller Technologies, a Limited Partnership, 500 Alexander Park, CN23, Princeton, New Jersey 08543-0023.

Pursuant to 35 CFR 404.7(a)(1)(i), any interested party may file written objections to this prospective exclusive license agreement. Written objections should be directed to Mr. Michael Zelenka, Intellectual Property Law Division, U.S. Army Communications Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5010.

**Kenneth L. Denton,**  
Army Federal Register Liaison Officer.  
[FR Doc. 93-27487 Filed 11-8-93; 8:45 am]  
BILLING CODE 5000-03-M

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.128B]

**Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With the Most Severe Disabilities and Technical Assistance Projects—Statewide Supported Employment Demonstration Projects; Notice Extending the Closing Date for Transmittal of Applications for New Awards for Fiscal Year (FY) 1994 and Clarifying Eligible Entities**

**Deadline for Transmittal of Applications:** The deadline date for transmittal of applications is extended from December 1, 1994, to December 22, 1994.

On September 24, 1993, the Department of Education published in the Federal Register (58 FR 50158, 50160) a notice inviting applications under the program for Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With the Most Severe Disabilities and Technical Assistance

Projects—Statewide Supported Employment Demonstration Projects.

The notice of final priority for this program published in the same issue of the Federal Register (58 FR 49982) identified 12 States (Alabama, Hawaii, Idaho, Massachusetts, Mississippi, Missouri, Ohio, Rhode Island, South Carolina, South Dakota, Texas, and West Virginia) that are eligible to apply under this competition because these States have not received grants under this program.

This notice failed to specify that, in addition to these 12 States, eligible entities in Puerto Rico, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau are also eligible to apply under this competition.

The purpose of this notice is to extend the deadline date for transmittal of applications so that applicants from the additional eligible geographical areas identified in this notice have sufficient time to submit their proposals.

**Deadline for Intergovernmental Review:** February 20, 1994.

**For Applications:** To request an application, telephone (202) 205-9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**For Further Information Contact:** Ted Gonzales, U.S. Department of Education, 400 Maryland Avenue, SW., room 3320, Switzer Building, Washington, DC 20202-2650. Telephone: (202) 205-8321.

**Program Authority:** 29 U.S.C. 777a(c).

**Dated:** November 4, 1992.

**Howard R. Moses,**  
Acting Assistant Secretary for Special Education and Rehabilitative Services.  
[FR Doc. 93-27545 Filed 11-8-93; 8:45 am]  
BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

**Federal Energy Regulatory Commission**

[Docket Nos. ER93-960-000, et al.]

**Gulf States Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

November 2, 1993.

Take notice that the following filings have been made with the Commission:

### 1. Gulf States Utilities Company

[Docket No. ER93-960-000]

Take notice that Gulf States Utilities Company (Gulf States), on October 26, 1993, tendered for filing additional information regarding the filing on September 17, 1993, of the Letter of Agreement between Gulf States and Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), dated September 10, 1993 (Letter of Agreement), supplementing the Agreement for Special Requirements Wholesale Electric Service between Gulf States and SRG&T, Rate Schedule FERC No. 162. The additional information clarifies the provisions of the Letter of Agreement for which Gulf States seeks an effective date of October 1, 1993.

A copy of the filing was served upon SRG&T, the purchaser under the rate schedule.

**Comment date:** November 16, 1993, in accordance with Standard Paragraph E.

### 2. The Connecticut Light and Power Company

[Docket No. ER94-51-000]

Take notice that The Connecticut Light and Power Company (CL&P), on October 25, 1993, tendered for filing proposed changes in its FERC Rate Schedules Nos. 224, 226, 227 and 256. The changes implement certain requirements of the Clean Air Act Amendments of 1990 and set forth the designated representative for dealings with the Environmental Protection Agency as required by the Act.

CL&P asks the Commission to waive its customary notice period and allow the rate schedule changes to become effective July 23, 1993. Copies of the filing were served upon the Connecticut Municipal Electric Energy Cooperative and the Connecticut Department of Public Utility Control.

**Comment date:** November 16, 1993, in accordance with Standard Paragraph E.

### 3. Georgia Power Company

[Docket No. ER94-57-000]

Take notice that on October 26, 1993, Georgia Power Company (GPC) filed notice of a change in practice under its contracts with the Southeastern Power Administration and Crisp County Power Commission. GPC and other affiliates of The Southern Company propose to refine the manner in which they determine the incremental price of energy.

**Comment date:** November 16, 1993, in accordance with Standard Paragraph E.

### 4. Philadelphia Electric Company

[Docket No. ER94-63-000]

Take notice that on October 28, 1993, Philadelphia Electric Company (PE)

tendered for filing an Agreement between PE and Atlantic City Electric Company (AE) dated October 21, 1993.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to AE. This Agreement supersedes an agreement between PE and AE dated March 19, 1991, which is on file with the Commission as PE's Rate Schedule FERC No. 57. In order to optimize the economic advantage to both PE and AE, PE requests that the Commission waive its customary notice period and permit the agreement to become effective on November 1, 1993.

PE states that a copy of this filing has been sent to AE and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Regulatory Commission.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 5. Mississippi Power Company

[Docket No. ER94-55-000]

Take notice that on October 22, 1993, Mississippi Power Company tendered for filing a change in the Interconnection Agreement with South Mississippi Electric Power Association and Mississippi Power Company, and the Agreement for Transmission Services with Southeast Power Administration. The change reflects refinements to the methodology currently used to determine the incremental price of energy under the above-referenced agreements.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 6. Iowa-Illinois Gas and Electric Company

[Docket No. ER93-614-000]

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52608, on October 25, 1993, tendered for filing revised tariff sheets as an amendment to its proposed change in its rate schedule for third party purchase and resale transactions pursuant to Commission Order No. 84. The revised tariff sheets have been designated as: Iowa-Illinois Gas and Electric Company, FERC Order No. 84 Rate Schedule, 2nd Revised Sheet No. 1, Cancelling 1st Revised Sheet No. 1.

The rate schedule is applicable to third party purchase and resale of electric power. The rate schedule change revises the quantifiable cost portion of the rate and explicitly states that the \$1/MWh charge for difficult to

quantify costs shall only apply to transactions of less than one year in duration and makes other clarifications, including a clarification that the \$6.50 per megawatt-hour rate will apply to energy transactions and not to capacity transactions.

Iowa-Illinois states that its reasons for proposing the rate schedule change are to reflect the increases and decreases in its quantifiable costs and to increase Iowa-Illinois' flexibility to effectively market capacity and energy by permitting it to charge less than the full cost-supported rate. On June 21, 1993, Iowa-Illinois submitted for filing a revised 2nd Revised Sheet No. 1 reflecting a lower rate for the quantifiable cost portion of the rate than was provided in 2nd Revised Sheet No. 1 as originally filed by Iowa-Illinois in this proceeding on April 20, 1993. Iowa-Illinois states that this lower rate is acceptable to Staff. The revised filing which is the subject of this notice makes various clarifications, including a clarification that the \$6.50 per megawatt-hour rate will apply only to energy transactions and not to capacity transactions. This filing does not change the rate set forth in the June 21, 1993 revised filing.

Iowa-Illinois requests an effective date of November 1, 1993 and a waiver of the sixty (60) day notice requirement. Iowa-Illinois states that a waiver of the notice requirement is reasonable because notice of the original filing was given on May 7, 1993 and notice of the first revised filing was given on June 29, 1993, an opportunity to intervene and protest has been given for both filings, that no protests have been filed. Iowa-Illinois further states that 2nd Revised Sheet No. 1 as amended provides a lower rate than proposed by 2nd Revised Sheet No. 1 as originally filed which was the subject of an earlier notice, that the 2nd Revised Sheet No. 1 submitted with this filing does not change the rate set forth in the June 21, 1993 revised filing or make other substantial changes to such revised filing.

Copies of the filing were served upon the Iowa Utilities Board; Illinois Commerce Commission; City of Eldridge, Iowa; Illinois Municipal Electric Agency; Waverly (Iowa) Light and Power; City of Tipton, Iowa; Illinois Power Company; Commonwealth Edison Company; Geneseo (Illinois) Municipal Utilities; Union Electric Company; Interstate Power Company; Iowa Electric Light and Power Company; Midwest Power Systems, Inc.; Iowa Southern Utilities Company; Northern States Power Company; City of

Pella, Iowa and Wisconsin Power & Light Company.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 7. WestPlains Energy, a Division of UtiliCorp United Inc.

[Docket No. ER94-58-000]

Take notice that on October 26, 1993, WestPlains Energy, a Division of UtiliCorp United Inc. (WestPlains) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving WestPlains application for membership in the WSPP. WestPlains requests that it be permitted to become a member of the WSPP.

In order to receive the benefits of pool membership as soon as possible, WestPlains requests to the extent necessary, that the Commission waive its prior notice requirement to allow WestPlains' membership in the WSPP to become effective as soon as possible, but in no event later than 60 days from this filing.

Copies of the filing were served upon the Western Systems Power Pool Executive Committee, the Colorado Public Utilities Commission and the Kansas Corporation Commission.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 8. WestPlains Energy, a Division of UtiliCorp United Inc.

[Docket No. ER94-59-000]

Take notice that on October 27, 1993, WestPlains Energy, a Division of UtiliCorp United Inc. (WestPlains) tendered for filing Letters of Intent entered into between WestPlains and certain Kansas municipal utilities for service under Service Schedule 90-P-1 System Participation Power. WestPlains states that this filing was made out of an abundance of caution in light of the Commission's Final Order in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993). WestPlains also seeks clarification of its Service Schedule 90-P-1, in order to insure that it need not make monthly filings of the Letters of Intent executed by its customers pursuant to that service schedule in the future.

In the event the Commission finds that the Letters of Intent must be filed with the Commission, WestPlains requests waiver of the Commission's notice requirements in order to effectuate the parties intent. Each Letter of Intent sets out the effective date for that level of service for the specific municipal customer. Those Letters of Intent which were executed prior to July



30, 1993, the date of the final order in Docket No. PL93-2, are eligible for the amnesty established by that order. Waiver is also requested as to the Letters of Intent which have been entered into since July 10, 1993.

A copy of the filing was served upon the Kansas Corporation Commission and each of the municipal utilities which take service under Service Schedule 90-P-1.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 9. Oklahoma Gas and Electric Company

[Docket No. ER94-56-000]

Take notice that on October 26, 1993, Oklahoma Gas and Electric Company (OG&E) tendered for filing proposed revisions to its WM-1 Firm Power Rate Schedule which is part of OG&E's FERC Electric Tariff 1st Revised Volume No. 1. The proposed WM-1 tariff would provide for a reduction in cost in return for a newly executed Electric Service Agreement for the customer.

Copies of this filing have been sent to the affected customers, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 10. Cambridge Electric Light Company

[Docket No. ER94-31-000]

Take notice that on October 25, 1993, Cambridge Electric Light Company (Cambridge) amended its filing of a Service Agreement (Agreement) between Cambridge and the Massachusetts Bay Transportation Authority (MBTA). Cambridge requests to change the effective date of the Agreement from September 17, 1993 to September 1, 1993. As requested by the customer, Cambridge renews its request of waiver of the Commission's regulations, and any such authorizations as may be necessary to permit the Agreement to become effective on September 1, 1993.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 11. Gulf Power Company

[Docket No. ER94-54-000]

Take notice that on October 22, 1993, Gulf Power Company tendered for filing a change in practice under its Interconnection Agreement with Alabama Electric Cooperative, Southeastern Power Administration, dated January 29, 1985, and its Transmission Service Agreement with Bay Resource Management, Inc., dated February 18, 1988. Gulf Power Company, in conjunction with a related filing of Southern Company Services,

Inc., and the other operating companies of the Southern Company, is proposing to refine the methodology currently used to determine the incremental price of energy under all of these agreements and contracts. The refined without will only be implemented after it is accepted without refund obligation and a final order of the Federal Energy Regulatory Commission is received. Gulf Power Company requests that the change in practice be allowed to become effective on January 1, 1994, without any refund obligation.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 12. Southwestern Public Service Company

[Docket No. ER93-931-000]

Take notice that on October 28, 1993, Southwestern Public Service Company (Southwestern) submitted for filing an amendment to its original filing in Docket No. ER93-931-000 involving a Rate Schedule between Southwestern and Lea County Electric Cooperative, Inc. (Lea County). Southwestern made its original filing on September 3, 1993 in Docket No. ER93-931-000. The Rate Schedule is an amended list of delivery points and a Contribution in Aid of Construction agreement between Southwestern and Lea County. The agreement provides for Lea County to pay Southwestern \$3,992 for the installation of strut insulators and jumpers, as well as an additional \$178 per month per delivery point for the two additional delivery points.

Southwestern has requested that the amendment become effective as of the date service commences and has requested a waiver pursuant to 18 CFR 35.11. The waiver request is supported by the agreement of Lea County.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### 13. Pacific Gas and Electric Company

[Docket No. ER94-62-000]

Take notice that on October 28, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing a Power and Transmission Services Agreement Between Lassen Municipal Utility District (Lassen) and PG&E dated September 22, 1993 (Agreement). The Agreement supersedes the current full-requirement contract between Lassen and PG&E (PG&E Rate Schedule FERC No. 117).

This Agreement resulted from the settlement of a dispute between Lassen and PG&E unrelated to the present rate schedule. Under the Agreement, Lassen may displace PG&E energy with third parties and will purchase 3 MW of firm

power from Western Area Power Administration. PG&E revenues from Lassen will be reduced as a result of Lassen changing from a full-requirements customer to a partial-requirements customer.

Copies of this filing have been served upon Lassen and the CPUC.

*Comment date:* November 16, 1993, in accordance with Standard Paragraph E.

#### Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27475 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. ER94-60-000, et al.]

Idaho Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 3, 1993.

Take notice that the following filings have been made with the Commission:

#### 1. Idaho Power Company

[Docket No. ER94-60-000]

Take notice that on October 25, 1993, Idaho Power Company (Idaho) tendered for filing revised rates for service to its customers covered by its four non-filed wholesale contracts.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Electric Energy, Inc.

[Docket Nos. ER93-950-000 and AC93-214-000]

Take notice that on October 29, 1993, Electric Energy, Inc. tendered for filing a change to the Appendix to its contract with the Department of Energy of the United States of America (the "Department of Energy") and the

October 7, 1992, Letter Supplement to the Power Supply Agreement between EEInc. on the one hand, and Kentucky Utilities Company, Union Electric Company, Illinois Power Company and Central Illinois Public Service Company collectively, the "Sponsoring Companies") on the other, as modified. The changed Appendix provides for an increase to the annual cap on total charges for Permanent Power and Excess Energy by EEInc. under its Agreements with the Department of Energy and the Sponsoring Companies to allow for the recovery of the transition obligation and accrual amounts required to comply with SFAS 106. The changes to the Appendix reflect annual cap levels for the years 1993 through 1998 and thereafter.

Copies of the Appendix were served on the Department of Energy of the United States of America, Kentucky Utilities Company, Union Electric Company, Illinois Power Company and Central Illinois Public Service Company.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### 3. UG Utilities

[Docket No. EL94-4-000]

Take notice that on October 25, 1993, UG Utilities, Inc. (UGI) tendered for filing a request for waiver of the annual report filing requirements of part 141 of the Commission's regulations.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### 4. PacifiCorp

[Docket No. ER93-278-000]

Take notice that on October 29, 1993, PacifiCorp, filed an amendment to its filing of the Agreement concerning use of facilities dated June 1, 1962, as amended, between PacifiCorp and Portland General Electric Company.

Copies of this letter were supplied to Portland General Electric Company and the Public Utility Commission of Oregon.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### 5. Washington Water Power Company

[Docket No. ER94-72-000]

Take notice that on October 29, 1993, the Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission a rate reduction for the Transmission Service Agreement (Transmission Agreement), FERC rate schedule No. 181, and the Transmission

Interconnection Agreement (Interconnection Agreement), FERC rate schedule No. 182, between the Washington Water Power Company and PacifiCorp. WWP states that this rate schedule is available for transmission wheeling service provided only to PacifiCorp. The Interconnection Agreement provides for electrical support to PacifiCorp's Pomeroy, Washington area loads.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### 6. WestPlains Energy, a Division of UtiliCorp United Inc.

[Docket No. ER94-75-000]

Take notice that on October 29, 1993, WestPlains Energy, a Division of UtiliCorp United Inc. (WestPlains) tendered for filing Letters of Intent entered into between WestPlains and certain Kansas municipal utilities for service under Service Schedule 92-I-1 Municipal Incremental Power Service. WestPlains states that this filing was made out of an abundance of caution in light of the Commission's Final Order in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993). WestPlains also seeks clarification of its Service Schedule 92-I-1, in order to insure that it need not make monthly filings of the Letters of Intent executed by its customers pursuant to that service schedule in the future.

In the event the Commission finds that the Letters of Intent must be filed with the Commission, WestPlains requests waiver of the Commission's notice requirements in order to effectuate the parties' intent. WestPlains states that those Letters of Intent which were executed prior to July 30, 1993, the date of the final order in Docket No. PL93-2, are eligible for the amnesty established by that order. Waiver is also requested as to the Letters of Intent which have been entered into since July 30, 1993.

A copy of the filing was served upon the Kansas Corporation Commission and each of the municipal utilities which are eligible for service under Service Schedule 92-I-1.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### 7. Portland General Electric Company

[Docket No. ER94-73-000]

Take notice that on October 29, 1993, Portland General Electric Company (PGE) tendered for filing An Agreement for PGE to Purchase Transmission Service from Department of Water and

Power of the City of Los Angeles (DWPLA) with an option to return transmission losses in kind. Copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

PGE requests that the Commission grant waiver of the notice requests to allow the Agreement to take effect in accordance with the terms on November 1, 1993.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### 8. Florida Power Corporation

[Docket No. ER94-74-000]

Take notice that on October 29, 1993, Florida Power Corporation (FPC) filed a Joint Use License Agreement with Orlando Utilities Commission (OUC), which allows the use of certain FPC facilities by OUC, including FPC's transmission and distribution poles located in the State of Florida, to attach transmission equipment including cables, wires, and appliances. To date there have been no transmission lines, wires or appliances attached by OUC, and therefore no jurisdictional charges have been collected by FPC under the Agreement. The agreement is being filed in the event that there are such charges in the future. FPC requests that this filing be accepted to become effective prospectively 60 days from today, on December 30, 1993.

*Comment date:* November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-27512 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP94-43-000]

**ANR Pipeline Company; Proposed Changes in FERC Gas Tariff**

November 3, 1993.

Take notice that on November 1, 1993, ANR Pipeline Company (ANR) tendered for filing, proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, to become effective December 1, 1993. ANR's filing effectuates a rate increase which is designed to recover ANR's overall cost of service, developed by utilizing a base period for the twelve months ended June 30, 1993, adjusted for known and measurable changes through the end of the test period, March 31, 1994. The filed for non-gas cost of service in the Primary Case is approximately \$121 million higher than the cost of service underlying ANR's Interim Settlement in Docket No. RP89-161-000, et al., approved by the Commission on September 30, 1992. ANR Pipeline Company, 60 FERC ¶ 61,319 (1992).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-27517 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-22-000]

**CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff**

November 3, 1993.

Take notice that on October 29, 1993, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act and Section 15 of the General Terms and Conditions of its tariff (General Terms), filed the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet Nos. 32, 33, 34, 35 and

36

CNG requests that these tariff sheets be made effective on November 1, 1993.

CNG states that the purpose of its filing is to update rates to reflect current transportation costs and to put into effect its annual Transportation Cost Rate Adjustment (TCRA) surcharge to return overcollections recorded in the applicable subaccounts of Account No. 186.

CNG seeks waiver of Section 15 of the General Terms to allow it to base its TCRA surcharge on the level of underrecoveries experienced on September 30, 1993, rather than June 30, 1993, as would be required by the tariff. CNG also seeks waiver of the 30-day notice requirement of the Natural Gas Act and the regulations to permit its filing to become effective on two days' notice.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-27515 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC93-8-000]

**Columbia Gas Transmission Corp.; Request for Extension of Time To File Updated Index of Entitlements**

November 3, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Ave. SE., P.O. Box 1273, Charleston, WV 25325-1273, filed on September 15, 1993, a petition for any waivers necessary to allow Columbia additional time to file its updated Index of Entitlements. As a result of Columbia's restructuring under Order No. 636, filing of the Index of Entitlement was delayed. In its October

12, 1993, supplemental filing, Columbia stated that before it could file a new Index of Entitlements, Columbia must receive customer service nominations, meet with customers to establish data required for the Index, and also meet with customers to discuss and accept enduse profiles. Columbia believes that this process will be completed by March 15, 1994, and that the 1993-1994 Index will be filed immediately thereafter. Columbia will then return to the timing observed in the past and continue to file its annual Index of Entitlements on September 15 of each year.

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before November 15, 1993, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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. 93-27520 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM94-3-23-000 and TQ94-1-23-000]

**Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff**

November 3, 1993.

Take notice that on October 29, 1993, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1993.

Eastern Shore states that the purpose of the instant filing is threefold: (1) To track changes in Eastern Shore's pipeline supplier's storage service rates; (2) to modify Eastern Shore's CWS and CFSS storage service rate schedules and tracking provisions to reflect changes made by Columbia Gas Transmission Corporation; and (3) to reflect lower commodity and demand sales rates.

Eastern Shore states that it seeks to reduce its CD Commodity and Demand sales rates by \$0.3161 and \$0.2948 per dt, respectively, as compared to those sales rates filed in Eastern Shore's Annual PGA Filing in Docket No.

TA94-1-23-000, et. al. Such reductions reflect (1) lower prices being paid to Eastern Shore's suppliers under its market responsive gas supply contracts and (2) a change in Eastern Shore's upstream pipeline billing determinants and the accompanying pipeline tariff rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests should be filed on or before November 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27523 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-52-000]

**Equitrans, Inc.; Request Under Blanket Authorization**

November 3, 1993.

Take notice that on November 1, 1993, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed a prior notice request with the Commission in Docket No. CP94-52-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap under Equitrans's blanket certificates issued in Docket Nos. CP83-508-000 and CP86-676-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to the public for inspection.

Equitrans proposes to install sales tap in the City of Monongahela Township, Washington County, Pennsylvania, to provide gas service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans would deliver up to one Mcf of natural gas on a peak day under its FERC Rate Schedule PLS. Equitrans states that installation of the proposed

sales tap would permit Equitable to provide gas service to Albert M. and Shirle Gallick of Marianna, Pennsylvania. Equitrans also states that its tariff does not prohibit this type of service.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27521 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-47-000]

**Kansas Gas and Electric Co.; Filing**

November 3, 1993.

Take notice that on October 22, 1993, Kansas Gas and Electric Company (KG&E) tendered for filing a Notice of Cancellation of Supplement No. 12 to Rate Schedule FERC No. 182.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27522 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-839-000]

**MG Electric Power, Inc.; Issuance of Order**

November 2, 1993.

On August 2, 1993, MG Electric Power, Inc. (MG Electric) filed a rate schedule under which it will engage in wholesale electric power and energy transactions as a marketer. MG Electric also requested waiver of various Commission regulations. In particular, MG Electric also requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MG Electric.

On October 19, 1993, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MG Electric should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MG Electric is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MG Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 1993.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27472 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-3-000]

**Northern Mindanao Power Corporation; Application for Commission Determination of Exempt Wholesale Generator Status**

November 3, 1993.

On October 29, 1993, Northern Mindanao Power Corporation (the "Applicant"), with its principal place of business at Sitio Mapalad, Barangay Dalipuga, Iligan City, Philippines, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a Philippine non-utility company that exclusively owns and intends to operate electricity generating facilities to be located near Iligan City in Mindanao, Philippines. All electric energy to be generated by those facilities will be delivered by the Applicant to National Power Corporation, a Philippine electric utility wholly-owned by the Philippine Government. The National Power Corporation will pay to the Applicant a fee, partially based on the electric energy to be delivered to the National Power Corporation by the Applicant.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before November 23, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-27513 Filed 11-8-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP94-40-000]

**Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff**

November 3, 1993.

Take notice that on October 29, 1993, Questar Pipeline Company (Questar) filed a report on the termination of its purchase gas adjustment provision, in

compliance with the Commission's August 2, 1993, order in Questar's restructuring case in Docket No. RS92-9.

Questar states that the purpose of this filing is to provide information supporting: (1) The cash-based Account No. 191 balance billed by Questar to Mountain Fuel Supply Company (Mountain Fuel), (2) the transportation and exchange imbalances and processing plant Btu reimbursement amounts transferred by Questar to Mountain Fuel and (3) the 103 percent past assessment test for the two applicable test intervals.

Questar states that a copy of the filing has been provided to Mountain Fuel, the Utah Public Service Commission and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell  
Secretary.

[FR Doc. 93-27518 Filed 11-8-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP94-51-000]

**Sea Robin Pipeline Co.; Application**

November 3, 1993.

Take notice that on October 29, 1993, Sea Robin Pipeline Company (Sea Robin), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP94-51-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain transportation services it provides for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states that it has provided firm transportation service of up to 13,601 Mcf per day for Northern

pursuant to Sea Robin's Rate Schedule X-15 from South Marsh Island Block 127 and East Cameron Block 335, offshore Louisiana, to a delivery point onshore at Erath, Louisiana. Sea Robin also states that it has provided firm transportation service of up to 7,169 Mcf per day for Northern pursuant to Sea Robin's Rate Schedule X-27 from Eugene Island Block 273, offshore Louisiana, to a delivery point onshore at Erath, Louisiana.

Northern has requested that these transportation services be converted to firm transportation services under subpart G of part 284 of the Commission's Regulations, it is stated. Accordingly, Sea Robin and Northern signed service agreements under Sea Robin's Rate Schedule FT to provide identical transportation services. Both agreements are to be effective November 1, 1993. In order to avoid any overlapping obligations on Northern's part to pay demand charges under two agreements, a November 1, 1993, effective date for the abandonment is requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further

notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sea Robin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27519 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-17-000]

### Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

November 3, 1993.

Take notice that on October 29, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is December 1, 1993.

Texas Eastern states that the tariff sheets are being filed pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that the filing constitutes Texas Eastern's first regular annual ASA filing under Section 15.6 for the purpose of reflecting changes in its requirement to retain gas in-kind in compensation for the quantities of gas used to provide service for its customers.

Texas Eastern states that the changes proposed to become effective beginning December 1, 1993, consist of (1) revised ASA shrinkage factors designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers for each seasonal period and (2) the ASA Surcharge designed to recover the net monetary value recorded in the Applicable Shrinkage Deferred Account as of August 31, 1993, including the carry-forward balance remaining unamortized from Texas Eastern's ASA Deferred Account under its pre-Order No. 636 tariff.

Texas Eastern states that the filing reflects an increase in its shrinkage factors and a monetary surcharge to amortize a net balance of approximately \$8.6 million in uncollected fuel costs over the 12 months beginning December 1, 1993.

Texas Eastern states that copies of its filing have been served on all Firm Customers of Texas Eastern and Interested State Commission, as well as

current shippers under interruptible rate schedules.

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 November 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27516 Filed 11-8-93; 8:45 am]

BILLING CODE 6717-01-M

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements", under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers:

RTD/JA(EU)-69, for the transfer of 62.650 kilograms of uranium containing 12.5 kilograms of the isotope uranium-235 (19.95 percent enriched) from the Federal Republic of Germany to Japan for use as fuel in the JMTR research reactor.

RTD/JA(EU)-70, for the transfer of 124.195 kilograms of uranium containing 24.777 kilograms of the isotope uranium-235 (19.95 percent enriched), from the Federal Republic of Germany to Japan for use as fuel in the JRR-3 research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 3, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 93-27588 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-M

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-71, for the transfer from the Federal Republic of Germany to Japan of 68 kilograms of uranium containing 13.4 kilograms of the isotope uranium-235 (19.95 percent enriched) for use as fuel for the JRR-3 and JRR-4 research reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 3, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 93-27589 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-M

## Office of Energy Efficiency and Renewable Energy

### Electric and Magnetic Field Effects Research and Public Information Dissemination—Program's Intent To Solicit Non-Federal Financial Contributions

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of intent.

**SUMMARY:** DOE today announces its intent to solicit matching financial contributions from non-Federal sources, following enactment of appropriated funds, in support of a national, comprehensive Electric and Magnetic Fields (EMF) Research and Public Information Dissemination Program, under Section 2118 of the Energy Policy Act of 1992, 42 U.S.C. 13478. DOE is required to solicit funds from non-Federal sources to offset at least 50 percent of the total funding for all activities under this program. The National Institute of Environmental Health Sciences and the Department will work together to carry out a program of research, development, and demonstration and will provide for public dissemination of the program results. DOE will not accept contributions which are contingent on acceptance of restrictions or obligations regarding expenditure of donated funds within the program.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Mr. Robert H. Brewer, Utility Systems Division, EE-141, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586-2828.

**SUPPLEMENTARY INFORMATION:** To accelerate Federal electric and magnetic fields research, Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program as part of the Energy Policy Act of 1992, 42 U.S.C. 13478. DOE has responsibility for program administration, engineering research and the dissemination of relevant engineering information to the public. The National Institute of Environmental Health Sciences will direct research on possible human health effects of electric and magnetic fields and will disseminate health information to the public. A total of \$65,000,000 is authorized to be appropriated to DOE for the period encompassing fiscal years 1993 through 1997. The Secretary of Energy is required to solicit contributions from non-Federal sources to offset at least 50 percent of the funding of all activities under the program. Furthermore, the Department

may not obligate funds for electric and magnetic fields research and public information activities pursuant to Section 2118 in a fiscal year, unless funds received from non-Federal sources are available to offset at least 50 percent of the appropriations for Section 2118 activities for that same year. Co-funding by non-Federal entities such as states, utilities and industrial groups will expedite an accelerated, unified research program on potential health effects of electric and magnetic fields.

In order to implement the fiscal year 1994 program, there will be, as soon as an appropriation is enacted, a specific solicitation for non-Federal contributions to offset the 1994 appropriations, and requesting that non-Federal contributions be received by a date certain. Annually, there will be similar specific solicitations for further non-Federal contributions to offset the appropriations for Section 2118 activities in succeeding years of the program. Contributions should be made in the form of a check payable to "U.S. Department of Energy" and should include the following annotation: "For EPA Act 2118, EMF Program". Contributions are to be mailed to U.S. Department of Energy; Office of Headquarters Accounting Operations; Fiscal Operations Division, CR-54; P.O. Box 500; Germantown, MD 20875-0500. DOE will provide a letter of receipt to each contributor. DOE reserves the right to return contributions which are provided subject to contingencies with regard to use of the funds within the program.

Issued in Washington, DC, on October 28, 1993.

Frank M. Stewart, Jr.,

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 93-27592 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Final Filing Deadline in Special Refund Proceeding No. KEF-0119 Involving Texaco Inc.

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of final deadline for filing applications for refund in special refund proceeding No. KEF-0119, Texaco Inc.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between

the DOE and Texaco Inc., Special Refund Proceeding No. KEF-0119. The previous deadline was September 30, 1991. The new deadline is February 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director; Richard A. Cronin, Jr., Staff Attorney, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. (202) 586-2860 (Dugan); (202) 586-4921 (Cronin).

**SUPPLEMENTARY INFORMATION:** The Office of Hearings and Appeals of the Department of Energy is hereby setting a final deadline for the filing of Applications for Refund in the Texaco refund proceeding. On March 5, 1990, we issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a consent order entered into by the DOE and Texaco Inc. (Texaco). See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990), 55 FR 9190 (March 12, 1990). That Decision established February 28, 1991 as the filing deadline for purchasers of Texaco refined products to submit refund applications. As the filing deadline neared, we continued to receive a large number of applications and inquiries about the Texaco refund proceeding. In order to provide additional time to the many Texaco customers who were unaware of the proceeding or were in the process of gathering information to support their refund claims, we extended the filing deadline to September 30, 1991. 56 FR 5824 (February 13, 1991).

Since September 30, 1991, we have routinely granted extensions of time for good cause. We have now received almost 20,000 refund applications. Consequently, we have concluded that eligible applicants have been provided with more than ample time to file. We will therefore not accept applications that are postmarked after February 28, 1994. All Applications for Refund from the Texaco Consent Order Fund postmarked after the final filing date of February 28, 1994, will be summarily dismissed. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 2, 1993.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 93-27590 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-P

**Final Closing Date for Special Refund Proceeding No. HEF-0110 Involving Reinauer Petroleum Co.**

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of closure of special refund proceeding HEF-0110, Reinauer Petroleum Co.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces that it is terminating the proceeding established to distribute refunds from the escrow account maintained pursuant to a consent order entered into between the DOE and Reinauer Petroleum Co.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8018.

**SUPPLEMENTARY INFORMATION:** On July 17, 1991, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Reinauer Petroleum Company. See Reinauer Petroleum Company, 21 DOE ¶ 85,332 (1991), 56 FR 33928 (July 24, 1991). That Decision established January 31, 1992, as the filing deadline for the submission of refund applications for direct restitution by purchasers of Reinauer's refined petroleum products. 21 DOE at 88,984.

The Office of Hearings and Appeals commenced accepting refund applications in the Reinauer refund proceeding on July 26, 1991, more than two years ago. All of the Applications for Refund filed in the Reinauer proceeding have been considered and resolved. Furthermore, in view of the extended period of time that has transpired since the commencement of the proceeding, and since no Applications for Refund have been submitted since January, 1992, we have concluded that all eligible applicants have been provided with ample time to file. Accordingly, 30 days from the date of issuance of this Notice, the proceeding established to distribute funds from the escrow account maintained pursuant to the consent order entered into between the DOE and Reinauer Petroleum Company will be closed. Any unclaimed funds remaining will be made available for indirect restitution pursuant to the Petroleum

Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 2, 1993.

**George B. Breznay,**  
Director, Office of Hearings and Appeals.  
[FR Doc. 93-27591 Filed 11-8-93; 8:45 am]  
**BILLING CODE 6450-01-P**

**Western Area Power Administration****Notice of Availability of the Draft Environmental Impact Statement for the Flatiron-Erie Transmission Line Project**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of availability of the draft environmental impact statement and time and location for public hearing.

**SUMMARY:** Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has issued for review and comment a draft environmental impact statement (EIS) for the proposed Flatiron-Erie Transmission Line Project (DOE/EIS-0159). The draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA, 40 CFR parts 1500-1508; and DOE NEPA implementing procedures, 10 CFR part 1021. Comments on the content of the draft EIS are invited from interested persons, organizations, and agencies. **DATES:** Written comments on the draft EIS are due no later than December 2, 1993. Comments should be sent to: Western Area Power Administration, Loveland Area Office, J0420, P.O. Box 3700, Loveland, CO 80539.

**ADDRESSES:** A formal public hearing will be held at which written and oral statements will be accepted. A court reporter will record the proceedings. Those persons, organizations, or agencies wishing to make oral statements will be asked to register at the door prior to the beginning of the hearing. The date and location of the hearing is: November 18, 1993, 7 p.m., Raintree Plaza Hotel, Front Range Room, 1900 Diagonal Highway 119, Longmont, CO 80502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rodney D. Jones, Environmental Specialist, Loveland Area Office, J0420, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7371.

**SUPPLEMENTARY INFORMATION:** Western has prepared a draft EIS that addresses the potential environmental impacts

associated with a proposal to replace wood-pole structures on the existing Flatiron-Erie 115-kilovolt (kV) transmission line. Western is proposing to replace a number of wood-pole structures with taller structures in order to meet ground clearance requirements for transmission line conductor during normal and peak operating conditions. The project would uprate the 31.5-mile long Flatiron-Erie transmission line by adding, replacing, modifying, or removing 83 wood-pole structures. The existing line has 216 structures. The height of some of the wood-pole structures would be increased by 5 to 15 feet. The voltage of the transmission line would remain at 115-kV, the existing conductor would remain in place, and the majority of the existing structure locations would remain the same. The proposed action is also required because of the deteriorated condition of some of the structures on the line. In the fall of 1990, Western performed tests to determine the structural conditions of all wood-pole structures. The results of those tests revealed the need for replacement of approximately 25 wood poles which were found to be structurally unsound because of internal rot. Replacement of these poles with new structures will also be done along with the structure modifications needed to uprate the line.

**Alternatives to the Proposed Action**

Several alternatives were examined in the draft EIS. Alternative transmission technologies evaluated include conventional overhead alternating current transmission, overhead direct current transmission, and underground construction. Alternative transmission systems, alternative routing, alternative design, and the no action are also evaluated.

**Availability of Review Copies of the Draft EIS**

Copies of the draft EIS have been distributed to interested Federal, State, and local agencies in Colorado; and to libraries, local planning offices, and civic institutions in potentially affected areas. Copies of the draft EIS are available for public review at the locations listed below. A more complete list of all individuals and agencies receiving a copy of the draft EIS can be obtained from the address given above.

**LIBRARIES:**

Fort Collins Public Library, Reference Desk, 201 Petersen Street, Fort Collins, CO 80521.  
Longmont Public Library, 409 4th Avenue, Longmont, CO 80502.



Copies of the document are also available for public review at Western's offices at:

Loveland Area Office, 5555 East Crossroads Blvd., Loveland, CO 80538-8986.

Headquarters Office, 1667 Cole Blvd., Building 19, Room 175, Golden, CO 80401.

A copy is also available at: DOE Reading Room, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

A limited number of copies are available on request for individuals or organizations who are potentially interested or directly affected by the proposed action. Requests for copies should be sent to: Western Area Power Administration, Loveland Area Office, J0420, P.O. Box 3700, Loveland, CO 80538-8986.

The draft EIS should be retained. The final EIS will consist of the draft EIS, a record of public comments, the responses to the comments, and any required changes or corrections. The final EIS is scheduled for release in the Spring of 1994.

Issued at Golden, Colorado, October 27, 1993.

**William H. Clagett,**  
Administrator.

[FR Doc. 93-27593 Filed 11-8-93; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4799-4]

### Meeting of the Environmental Requirements for Local Governments Policy Dialogue Advisory Committee

On December 7-9, 1993, the Environmental Requirements for Local Governments Policy Dialogue Advisory Committee and its standing subcommittee, the Small Town Task Force, will conduct their first meetings. The purpose of both meetings is to introduce new members to the Federal Advisory Committee process and develop the Committee's first priorities and projects.

The Committee is charged with identifying and recommending a series of activities to improve the implementation of environmental programs by local governments. These activities should be developed to address unmet local government needs caused by a lack of coordination and communication among various governmental agencies and programs; an inability to develop priorities as to the problems to be addressed; the need for

data and information on the costs and benefits of regulation and on technical, legal, and scientific aspects of regulation; limited financing; and, inflexible requirements resulting from the nature of regulations.

The Small Town Task Force is charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and, identifying means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic conditions of such systems and infrastructure.

The meeting will be held at the Governor's House Holiday Inn located at Rhode Island Avenue and Seventeenth Streets NW., in Washington, DC. The meeting of the full Committee will begin at 12:30 p.m. on December 7 and conclude at 12:30 p.m. on December 8. The Small Town Task Force will meet independently beginning at 1:30 p.m. on December 8 and concluding at 12:30 p.m. on December 9.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260-4719 or by writing to 401 M Street, SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

**Shelley H. Metzbaum,**

*Associate Administrator, Office of Regional Operations and State/Local Relations.*

[FR Doc. 93-27605 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-SO-P

[FRL-4799-3]

### Gulf of Mexico Program Technical Advisory Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting of the Technical Advisory Committee of the Gulf of Mexico Program.

**SUMMARY:** The Gulf of Mexico Program's Technical Advisory Committee will hold a meeting on November 30-December 1, 1993 at the Doubletree Hotel in New Orleans, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, at (601) 688-3726.

**SUPPLEMENTARY INFORMATION:** A meeting of the Technical Advisory Committee of the Gulf of Mexico Program will be held on November 30-December 1, 1993, at the Doubletree Hotel in New Orleans, Louisiana. The committee will meet from 8:30 a.m. to 4:30 p.m. on November 30 and from 8:30 a.m. to 2 p.m. on December 1. Agenda items will include: Drafting and adoption of bylaws for the Technical Advisory Committee; election of non-federal co-chair; program update; status of proposed legislation; current action agenda process; review of action items selected as highest priority by the issue committees; review of large marine ecosystem workshop proposal; review of strategic assessment proposal; and discussion of methodology for program integration or cross issue ranking. The meeting is open to the public.

**Douglas A. Lipka,**

*Acting Director, Gulf of Mexico Program.*

[FR Doc. 93-27606 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-SO-M

[FRL-4797-9]

### Arkansas; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

**ACTION:** Notice of final determination on application of Arkansas for full program adequacy determination.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA)

to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities. Arkansas applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Arkansas' application and proposed a determination that Arkansas' MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. EPA is today issuing a final determination that the Arkansas' program is adequate.

**EFFECTIVE DATE:** The determination of adequacy for Arkansas is effective on November 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Becky Weber, Chief, Solid Waste Section, US EPA Region 6, Dallas, Texas 75202; (214) 655-6760.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste

landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

**B. State of Arkansas**

On June 30, 1993, Arkansas submitted an application for adequacy determination for Arkansas' municipal solid waste landfill permit program. On August 25, 1993, EPA published a tentative determination of adequacy for all portions of Arkansas' program. Further background on the tentative determination of adequacy appears at 58 FR 44819, 44821 (August 25, 1993). A 30-day public comment period was held until September 24, 1993. In this notice of tentative determination, EPA announced that a public hearing would be held if a sufficient number of people requested a hearing. The Agency received no comment letters in response to the tentative determination. No requests for a public hearing were

received, therefore, a hearing was not held.

**C. Decision**

EPA concludes that Arkansas' application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arkansas is granted a determination of adequacy for all portions of its municipal solid waste permit program. Arkansas' solid waste program does not apply and cannot be enforced in Indian country in the State. Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

**Compliance With Executive Order 12866**

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 25, 1993.

Joe D. Winkle,

Regional Administrator.

[FR Doc. 93-27468 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59327; FRL-4743-3]

### Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-93-23. The test marketing conditions are described below.

**EFFECTIVE DATE:** November 3, 1993. Written comments will be received until November 24, 1993.

**FOR FURTHER INFORMATION CONTACT:** Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, D.C. 20460, (202) 260-3780.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-93-23. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in

the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm. ETG-102 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-93-23. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

#### TME-93-23

**Date of Receipt:** September 21, 1993. The extended comment period will close on November 24, 1993.

**Applicant:** Reichhold Chemicals, Inc.  
**Chemical:** (G) Polyurethane Adhesive.  
**Use:** (G) Adhesive.

**Production Volume:** Confidential.

**Number of Customers:** Confidential.

**Test Marketing Period:** Confidential.

Commencing on the first day of commercial manufacture.

**Risk Assessment:** EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

#### List of Subjects

Environmental protection, Test marketing exemptions.

Dated: November 3, 1993.

Denise M. Keehner.

Acting, Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-27609 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4798-7]

### New York State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

Notice is hereby given that a petition was received from the State of New York on July 1, 1993 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4, (the "Clean Water Act"), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Huntington Harbor and Lloyd Harbor, Town of Huntington, County of Suffolk, State of New York.

This petition was made by the New York State Department of Environmental Conservation (NYSDEC) in cooperation with the Town of Huntington. After receipt of an affirmative determination in response to this petition, NYSDEC will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Huntington and Lloyd Harbors in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Town of Huntington is located on the north shore of Long Island and includes approximately 64 miles of tidal shoreline contiguous to Long Island Sound. Huntington Harbor encompasses approximately 340 acres of tidal waters and surrounding wetlands. Lloyd Harbor consists of approximately 800 acres that has been designated as a "Significant Coastal Fish and Wildlife Habitat Area" by New York State. The proposed "No-Discharge Zone" would include Huntington and Lloyd Harbors with the seaward boundary beginning at East Beach, extending south to Huntington Lighthouse, and then landward to the Wincoma Peninsula.

The State of New York has certified that there are six existing pump-out facilities available to service vessels which use Huntington and Lloyd Harbors, and one additional facility proposed for construction. Four are

located in the southern portion of Huntington Harbor and are open to the general public. Of these, two facilities are owned and operated by the Town of Huntington, are open continuously, and charge no fee for pump-out services. They can service vessels up to 60 feet in length with up to an 8 foot draft. The other two facilities are privately owned and charge a \$10.00 fee for pump-out services. These two facilities have vessel size limitations of 65 foot length and 14 foot draft, and 40 foot length and 6 foot draft. The Town of Huntington proposes to construct and operate a pump-out facility at the Castle Cove Marina, near the mouth of Huntington Harbor and closer to Lloyd Harbor. Two additional facilities are located in nearby Northport Harbor. One is a pump-out facility operated by the Town of Huntington and the other is a portable unit at a privately owned marina which is designed to service vessels within their slips.

Vessel waste generated from the pump-out facilities in Huntington Harbor is transported to the Town sewage treatment plant, which provides pretreatment and full secondary treatment. This plant operates under a State Pollutant Discharge Elimination System (SPDES) permit issued by the New York State Department of Environmental Conservation.

According to the State's petition, the maximum daily vessel population for the waters of Huntington Harbor and Lloyd Harbor is approximately 1,905 vessels. This estimate is based on summer weekend/holiday levels of usage and includes 150 vessels in Lloyd Harbor, 1,100 vessels berthed in marinas of Huntington Harbor, and 655 vessels moored in Huntington Harbor.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Huntington and Lloyd Harbors in the Town of Huntington, New York. A final determination on this matter will be made following the 30 day period for public comment and will result in a New York State prohibition of any sewage discharges from vessels in Huntington and Lloyd Harbors.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before December 9, 1993. Comments or requests for information or copies of the applicant's petition should be addressed to Anne Reynolds, U.S. Environmental Protection Agency, Region 2, Water Permits and Compliance Branch, 26 Federal Plaza, New York, New York, 10278. Telephone: (212) 264-7674.

Dated: October 22, 1993.

**Kathleen C. Callahan,**

*Acting Regional Administrator.*

[FR Doc. 93-27601 Filed 11-8-93; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications, one for modification of an existing noncommercial FM station and one for a new noncommercial FM station:

Applicant, city and state	File No.	MM docket No.
A. The University Foundation, California State University at Chico; Redding, CA.	BPED-920316ME	93-273
B. State of Oregon acting by and through the State Board of Higher Education and for Southern Oregon State College; Klamath Falls, OR.	BPED-920630ME	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

#### Issue Heading Applicants

1. Financial, A
2. 307(b)—Noncommercial Educational, A, B
3. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the

Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202-857-3800).

**Larry D. Eads,**

*Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 93-27452 Filed 11-8-93; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before January 10, 1994.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borrer, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.

*Type:* Revision of 3067-0022.

*Title:* National Flood Insurance Program Policy Forms.

**Abstract:** In order to provide for the continued wide-spread availability of policies for flood insurance, policies will continue to be marketed through the facilities of licensed insurance agents or brokers in the various States. Applications for Federal flood insurance coverage are forwarded to a National Flood Insurance Program (NFIP) servicing company designated as fiscal agent by the Federal Insurance Administration. The servicing company examines the applications and premiums and issues flood insurance

policies. The following forms are used for continued sales and servicing of policies under the NFIP: FEMA Forms 81-16 and 81-16A, Application for Flood Insurance (Parts 1 and 2); FEMA Form 81-17, Cancellation/Nullification Request; FEMA Form 81-18, General Change Endorsement; Request for Policy Processing and Renewal Information (RPPRI) Letter for Applications and Endorsements and RPPRI Letter for Renewals; FEMA Form 81-25, V-Zone Risk Factor Rating; FEMA Form 81-67, Preferred Risk Application; and the National Flood Insurance Renewal Expiration Notice.

*Type of Respondents:* Individuals and households; State and local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small Businesses or organizations.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 47,185 hours.

*Number of Respondents:* 475,035.

*Estimated Average Burden Time per Response:* 10 minutes.

*Frequency of Response:* On occasion.

Dated: November 1, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93-27497 Filed 11-8-93; 8:45 am]

BILLING CODE 6718-01-M

#### Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before January 10, 1994.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by

calling or writing Linda Borrer, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2624.

*Type:* Reinstatement of 3067-0103.

*Title:* FEMA Nuclear Power Plant Alert and Notification System: Public Telephone Survey.

*Abstract:* The Federal Emergency Management Agency (FEMA) shall randomly telephone survey the residents within the 10-mile Emergency Planning Zone (EPZ) of the Watts Bar Nuclear Power Plant and the Seabrook Nuclear Power Station, as stipulated in Appendix 3 of NUREG0654/FEMA-REP-1, Rev. 1. Residents will be voluntarily surveyed using the attached standardized questionnaire.

*Type of Respondents:* Individuals or households.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 55 hours.

*Number of Respondents:* 656.

*Estimated Average Burden Time per Response:* 5 minutes.

*Frequency of Response:* Once.

Dated: November 1, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93-27498 Filed 11-8-93; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-999-DR]

#### South Dakota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Dakota (FEMA-999-DR), dated July 19, 1993, and related determinations.

**EFFECTIVE DATE:** September 10, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 10, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-27493 Filed 11-8-93; 8:45 am]

BILLING CODE 6718-02-M

#### Open Meeting, Board of Visitors for the Emergency Management Institute

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

**NAME:** Board of Visitors for the Emergency Management Institute.

**DATES OF MEETING:** December 9-10, 1993.

**PLACE:** Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

**TIME:** December 9, 1993, 8:30 a.m.-5 p.m.; December 10, 1993, 8:30 a.m.-12 noon.

**PROPOSED AGENDA:** December 9: The board's three working groups will provide status reports to the full board and develop a strategy for the board's 1993 Annual Report. The board will observe a simulated recovery exercise by Douglas County, Colorado, participants attending an Integrated Emergency Management Course at EMI. As schedules permit, the board may meet with the FEMA Director.

December 10: The board will meet in working session to begin preparation of its 1993 Annual Report.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1251, on or before December 1, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-27499 Filed 11-8-93; 8:45 am]

BILLING CODE 6718-01-M

[Docket Nos.: FEMA-REP-10-OR-2; FEMA-REP-10-WA-2]

### Discontinuation of Offsite Radiological Emergency Planning and Preparedness for the Trojan Nuclear Plant

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency gives notice that it has discontinued offsite radiological emergency planning and preparedness activities for the Trojan Nuclear Plant in Columbia County, Oregon, effective immediately. The Portland General Electric Company has ceased power operations at the Trojan Nuclear Plant, the Nuclear Regulatory Commission has granted exemptions from offsite radiological emergency response planning for the plant, and FEMA is no longer required to monitor, review, or report on offsite radiological emergency planning and preparedness activities at the plant.

**EFFECTIVE DATE:** October 15, 1993.

**ADDRESSES:** Comments on this notice are invited and should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646-4536.

**FOR FURTHER INFORMATION CONTACT:**

Richard W. Donovan, Regional Assistance Committee (RAC) Chairman, FEMA Region X, Federal Regional Center, 130 228th Street, SW., Bothell, Washington 98021-9796, (206) 487-4693. Please refer to Docket File Numbers FEMA-REP-10-OR-2 and FEMA-REP-10-WA-2.

**SUPPLEMENTARY INFORMATION:** On July 6, 1982, the Federal Emergency Management Agency (FEMA) formally approved the State and local offsite radiological emergency response plans and preparedness under FEMA Rule, 44 CFR, part 350, for the Trojan Nuclear Plant (TNP), located in Columbia County, Oregon. FEMA determined that the plans and preparedness of the State of Oregon, the State of Washington, Columbia County (Oregon), and Cowlitz County (Washington) were adequate to protect the health and safety of the public living in the vicinity of the site.

Portland General Electric Company (PGE) notified the U.S. Nuclear Regulatory Commission (NRC) on January 27, 1993, that it had decided to cease power operations permanently at the Trojan Nuclear Plant. On February 2, 1993, the PGE notified the NRC that it had ceased power operations and

moved all fuel from the reactor to the spent fuel pool. The NRC amended PGE's operating license on May 5, 1993, to a possession-only license.

On September 30, 1993, the NRC officially notified FEMA that PGE had been granted an exemption from certain provisions of the NRC rule related to offsite radiological emergency response planning for TNP, 10 CFR 50.54(q). In light of the exemptions granted to PGE, the NRC no longer requires FEMA to monitor, review, or report on offsite radiological emergency planning and preparedness activities at TNP.

On October 15, 1993, FEMA officially notified the Governors of the States of Oregon and Washington that, as a result of this exemption and the defueled condition of the plant, offsite radiological emergency plans and preparedness will no longer be required for the Trojan Nuclear Plant. Effective immediately, FEMA is discontinuing its offsite radiological emergency planning and preparedness activities for the site. Furthermore, FEMA has advised the States of Oregon and Washington that formal approval of State and local offsite radiological emergency response plans for TNP, granted July 6, 1982 under 44 CFR part 350, is no longer applicable.

Dated: November 2, 1993.

**Richard W. Krimm,**

*Acting Associate Director.*

[FR Doc. 93-27500 Filed 11-8-93; 8:45 am]

**BILLING CODE 6718-20-P**

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## FEDERAL HOUSING FINANCE BOARD

[No. 93-80]

### Pricing of Services

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice of methodology and request for comments.

**SUMMARY:** The Federal Housing Finance Board ("Finance Board") is revising the methodology to be used in determining Federal Home Loan Bank ("FHLBank") compliance with the Private Sector Adjustment Factor ("PSAF") pricing requirements for item processing services.

**DATES:** Comment date: Comments must be received by December 9, 1993. Effective date: January 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Edwin J. Avila, Financial Analyst, (202) 408-2871; or Thomas D. Sheehan, Assistant Director, (202) 408-2870, District Banks Directorate; Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

## SUPPLEMENTARY INFORMATION:

### I. Introduction

The purpose of this announcement is to invite public comment on the methodology used by the Finance Board in determining FHLBank compliance with the PSAF pricing requirements for item processing services. The methodology published today will go into effect 60 days from the date of publication unless the Finance Board believes, based on the comments received, that any changes should be made in the methodology. In that event, the Finance Board will publish the final version of the methodology as changed based on the comments.

### II. Statement of Methodology

#### A. Statutory Foundations of PSAF

The Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA") amended Section 11(e) of the Federal Home Loan Bank Act (12 USC 1431(e)), authorizing the FHLBanks to, for the first time, provide Negotiable Order of Withdrawal ("NOW") account and other item processing services, in addition to Demand Deposit Account ("DDA") services. It also required the FHLBanks to charge for these services consistent with the statutory pricing principles established for the Federal Reserve Banks ("FRBs").

The statutory pricing principles provide that: (1) Services must be priced explicitly; (2) services must be available to member and nonmember depository institutions on an equal basis; (3) fees must cover direct and indirect costs and must also cover an imputed cost that includes taxes paid and the return on capital that would have been provided if the services had been furnished by a private firm; and (4) interest on float must be charged at the fed funds rate.

#### B. Methodology

##### 1. Modeled After the Federal Reserve System's PSAF Methodology

The Finance Board's methodology for evaluating each FHLBank's compliance with the PSAF pricing principles is modeled after the methodology used by the Federal Reserve Board of Governors ("Fed") to evaluate the Federal Reserve System's compliance with the PSAF pricing principles. The Fed's methodology is the standard. It has been subjected to extensive review and comment during the periodic revisions it has undergone over the years.

## 2. Bank Holding Company ("BHC") Sample Used as Private Sector Model

The statutory pricing principles require the FHLBanks to impute costs that are incurred by private sector firms offering the same services. The FHLBanks impute debt, income taxes and a required return on capital which are based on the average rates from a bank holding company sample developed by the Fed for use in its PSAF calculation. Currently, the BHC sample consists of the consolidated financial data from the nation's 50 largest BHCs (in asset size).

## 3. Competitive Return Test

The PSAF methodology is actually a competitive return test. Compliance with the pricing principles is assumed if a FHLBank is able to demonstrate a return on equity from its item processing services that is at least equal to the average return on equity attained by the BHC sample group.

## 4. Individual FHLBank Compliance

While the Fed monitors FRB compliance on a System-wide basis, the Finance Board determines compliance on an individual FHLBank basis. However, the same nationwide set of BHC data that the Fed uses in its compliance testing is used by the Finance Board to impute certain costs to all the FHLBanks. It should be noted that the PSAF methodology is used only to test compliance with the competitive pricing principles and is not used to set prices on an item-by-item basis.

## 5. Documentation Reviewed—The Balance Sheet and Income Statement

Each FHLBank that provides item processing services submits an annual pro forma balance sheet and income statement for its item processing services to the Finance Board. The balance sheet consists of those assets the FHLBank has identified as having been employed in providing item processing services and the liabilities and capital used to finance these assets. The monthly average of collected deposits which results from NOW/DDA activity are assumed to be invested in short-term assets. All other assets are considered to be financed by a corresponding amount of debt and capital imputed to item processing services. Short-term assets (cash, receivables and prepaid expenses) are assumed to be financed by short-term debt. Long-term assets (plant and equipment) are assumed to be financed by a combination of long-term debt and capital in a ratio equal to that of the BHC sample. The financing costs of debt and capital are based on the average interest rates for the BHC sample.

The statutory pricing principles require the FHLBanks' item processing operations to generate an imputed return on capital that would have been provided if the services had been furnished by a private firm. The PSAF methodology imputes the amount of equity needed to fund item processing services as a function of the long-term assets (plant and equipment) required to support these operations.

The income statement consists of fee income and interest income on balances attributed to NOW/DDA services, less direct and indirect expenses, along with imputed costs that would have been incurred if the services had been performed by a private firm. Interest income on balances is based on a short-term earnings rate which reflects a minimum amount of interest rate risk. Direct and indirect expenses are derived from each FHLBank's internal cost accounting system and functional cost allocation methodology. Direct operating expenses consist of salaries, benefits, cost of facilities and equipment, supplies, contractual services, and other items. Indirect expenses consist of overhead items such as salaries, benefits, etc. for the administrative departments of the FHLBanks, such as directors, administration, personnel, accounting, legal, data processing, etc.

## 6. Imputed Expenses

Sales tax and float expense (if applicable) are imputed. Interest expense is charged on the debt that is imputed to finance item processing related assets. The interest rates are based on the BHC sample. The FHLBanks are exempt from taxes, but the resulting net income before taxes is subjected to the average effective income tax rate of the BHC sample for PSAF purposes.

Insurance assessments on deposits are a cost borne by the benchmark private sector competitor group, BHCs, but not by the FHLBanks which also use deposits as a funding vehicle for assets supporting their check processing activities. Each FHLBank, therefore, imputes an assessment for deposit insurance on its uncollected DDA balances, which represent the item processing deposits which would be subject to deposit insurance if the FHLBank were a commercial correspondent. This adjusted deposit base is used only to calculate the imputed deposit insurance assessment. Total deposit balances continue to be used to calculate corresponding investment balances and their associated interest income, expense and net spread.

## 7. Supplemental Capital Adequacy Test

The PSAF methodology treats equity as a financing source only, relating it to the funding of long-term assets. FHLBanks that lease a significant amount of their facilities or equipment or have heavily depreciated equipment, impute less capital in support of these operations than FHLBanks which own relatively new facilities and equipment. Consequently, the Finance Board deems it prudent to require a supplemental test to ensure the adequacy of capital imputed under the PSAF methodology.

Commercial bank providers of item processing services are required by their regulators to hold capital against certain assets under the risk-based capital guidelines. These standards apply to all assets employed by a bank, including those allocable to the item processing services area.

However, for the following reasons, the Finance Board believes that a risk-based capital test would not be the most appropriate for determining capital adequacy under the PSAF methodology.

(1) Investment risk relates more to a FHLBank's investment or treasury desk than to its item processing business.

(2) The risks inherent in item processing relate primarily to the volatility of cash flows, rather than investment risk.

(3) The capital structures of non-bank data processing firms, which are fast becoming the FHLBanks' primary item processing competition, reflect potential business risk, not the risk associated with assets funded by deposit balances. These competitors are not subject to risk-based capital requirements.

Thus, while it appears that some form of supplemental capital adequacy test is needed, the Finance Board believes that one based upon the risk associated with the item processing business itself appears more appropriate than one based on the risk-weight of assets funded by deposits.

The Finance Board has chosen a supplemental capital adequacy test that evaluates the sufficiency of each FHLBank's imputed equity to absorb business losses from volatility of earnings and loss of customer base. Sufficient capital is required to cover twice the difference between the average annual net income (excluding imputed costs) and the lowest annual net income (excluding imputed costs) of each FHLBank in the most recent five-year period. This ensures adequate capital to offset two years of business losses calculated at the maximum level of business loss experienced by the FHLBank over the most recent five-year period. If the total amount of capital

imputed by a FHLBank in the PSAF methodology is less than the amount required by the supplemental capital adequacy test, then that FHLBank's imputed capital must be increased by the amount of the difference.

Such an increase in imputed capital would result in an offsetting reduction in imputed liabilities and a corresponding decrease in interest expense. The reduction in interest expense would increase net income but because the income is spread over a larger capital base, it would reduce the return on capital.

#### 8. Corrective Action in the Event of Noncompliance

Each FHLBank reports to the Finance Board annually both its past year's actual revenue and costs and the current year's pricing schedules for item processing services. The Finance Board compares each FHLBank's prior year PSAF-adjusted return on equity against the average ROE for the BHC control group. The FHLBank is certified to be in compliance with the test for competitive pricing of item processing services if it meets or exceeds the control group's average ROE.

If an FHLBank fails the PSAF compliance test, it must submit for Finance Board review either: a revised pricing schedule for item processing services; a business plan designed to resolve the non-compliance; or an explanation of the unanticipated and temporary event or circumstance which led to the failure. Such pricing schedule, business plan, or explanation would include a strategy for how and when the FHLBank expects to return to compliance. The FHLBank's proposal for dealing with the non-compliance requires the endorsement of the Finance Board or its designee prior to implementation.

#### C. Supplemental Profitability Test

The PSAF is not, nor was it designed to be, an internal management tool for assessing the profitability of item processing operations. The objective of the PSAF is to ensure that the FHLBanks do not unfairly compete with private providers of item processing services by virtue of their governmental status. The PSAF accomplishes this by adding certain imputed expenses and the imputed funding costs of debt and capital to actual operating revenues and expenses and comparing the results to those experienced by a sample group of competitors.

To ensure that the item processing operations of the FHLBanks also contribute meaningfully to the FHLBanks' net income, the Finance

Board also applies a supplemental profitability test to assess the financial results of the FHLBanks' item processing operations. The Finance Board has chosen net operating margin, defined as net operating income divided by gross revenues, as the appropriate measure for this supplemental profitability test. This measurement differs significantly from the PSAF ROE test in that it measures each FHLBank in its true operating environment, and not as a simulated private firm.

Each FHLBank's net operating margin from item processing operations is compared to the net operating margin for the FHLBank as a whole, as well as to the item processing operations of the other FHLBanks that provide such services. The net operating margin is used by the Finance Board only to be used as an internal management tool to assess FHLBank item processing profitability. Compliance with the PSAF requirements will continue to be based on the competitive return test designed by the Fed.

The Federal Housing Finance Board hereby adopts the PSAF methodology as set forth above, effective January 10, 1994.

By the Federal Housing Finance Board.

Dated: October 27, 1993.

Daniel F. Evans, Jr.,  
Chairman.

[FR Doc. 93-27423 Filed 11-8-93; 8:45 am]

BILLING CODE 6725-01-P

## FEDERAL RESERVE SYSTEM

### Chemical Banking Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 3, 1993.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical Banking Corporation*, New York, New York; to acquire, Equipment Credit Services, Inc., San Francisco, California, through its subsidiary, the CIT Group Holdings, Inc., New York, New York, and thereby engage in commercial finance and equipment leasing activities pursuant to §§ 225.25(b)(1) and (b)(5)(i), respectively, of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *PrairieLand Bancorp, Inc.*, Bushnell, Illinois; to acquire Alfred E. Hemen Accounting, Hamilton, Illinois, and thereby engage in providing tax planning, tax preparation, and record keeping necessary for tax preparation pursuant to § 225.25(b)(21) of the Board's Regulation Y. **Comments on this application must be received by November 23, 1993.**

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gold Bancshares, Inc.*, Prairie Village, Kansas; to acquire Provident Bancshares, Inc., St. Joseph, Missouri, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.



Board of Governors of the Federal Reserve System, November 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-27489 Filed 11-8-93; 8:45 am]

BILLING CODE 6210-01-F

**Dennis P. Hartman, 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 November 29, 1993.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dennis P. Hartman*, to acquire an additional 20.57 percent of the voting shares of Hartman Bancshares, Inc., Okabena, Minnesota, for a total of 69.02 percent, and thereby indirectly acquire First State Bank of Okabena, Inc., Okabena, Minnesota.

**B. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *T. Brent Ballinger*, Pawhuska, Oklahoma; to acquire an additional 8.44 percent of the voting shares of N.B.C. Bancshares, Inc., Pawhuska, Oklahoma, for a total of 31.95 percent, and thereby indirectly acquire NBC Bank, Pawhuska, Oklahoma.

Board of Governors of the Federal Reserve System, November 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-27490 Filed 11-8-93; 8:45 am]

BILLING CODE 6210-01-F

**FEDERAL TRADE COMMISSION**

[Docket 9253]

**Abbott Laboratories; Proposed Consent Agreement with Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois-based manufacturer of infant formula from soliciting its competitors to adopt or adhere to restrictions against consumer advertising included in Infant Formula Council or other organizational codes or statements, except to the extent that they prohibit false or deceptive advertising.

**DATES:** Comments must be received on or before January 10, 1994.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Dagen or Michael Antalics, FTS/S-2627, Washington, DC 20580. (202) 326-2628 or 326-2662.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The agreement herein, by and between Abbott Laboratories, a corporation, hereinafter sometimes referred to as "respondent," by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Abbott Laboratories is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Illinois, with its office and principle place of business located at One Abbott Park Road, Abbott Park, Illinois 60064.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's

address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order becomes final, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

*It is ordered* That, for purposes of this order, the following definitions shall apply:

A. "Respondent" means Abbott Laboratories, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at One Abbott Park Road, Abbott Park, Illinois 60064, and its successors, assigns, subsidiaries, divisions, groups and affiliates controlled by Abbott Laboratories, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

B. "Infant formula" means a food, as described in 21 U.S.C. 321(aa), which purports to be or is represented for special dietary use solely as a food for infants by reason of simulation of human milk or its suitability as a complete or partial substitute for human milk.

##### II

*It is further ordered* That respondent, in connection with the advertising, offering for sale, sale or distribution of infant formula in commerce, as commerce is defined in the Federal Trade Commission Act, shall forthwith cease and desist from, directly or indirectly, through subsidiaries or otherwise:

A. Intentionally exchanging information with any other manufacturer of infant formula relating to the advertising in the United States, its territories or possessions of infant formula through the mass media directly to the consumer.

B. Entering into or attempting to enter into any agreement, or enforcing any

such agreement, with any other manufacturer of infant formula to refrain from or restrict otherwise legal infant formula marketing practices in the United States, its territories or possessions, including but not limited to requesting any health care professional or other third party to request a competitor of respondent to refrain from or restrict otherwise legal infant formula marketing practices in the United States, its territories or possessions.

C. Soliciting adherence by any competitor to, or adoption by any competitor of, any provision restricting advertising in the United States, its territories or possessions of infant formula through the mass media directly to the consumer, including, but not limited to, such provisions contained in the Infant Formula Council's Draft Policies and Practices, the American Academy of Pediatrics' Marketing Code or policy statements, the World Health Organization International Code of Marketing of Breast-Milk Substitutes, or any other industry-wide policy statement or proposal on domestic infant formula marketing practices; provided, however, that nothing contained in this paragraph shall prevent respondent from discussing or communicating to persons other than intentionally to its competitors, its position concerning the desirability or appropriateness of any such policies, practices, codes or statements, except as otherwise prohibited by this order.

*Provided, however:* That nothing contained in this order shall be construed to prevent respondent from exercising rights permitted under the First Amendment to the United States Constitution to petition any government executive agency or legislative body concerning legislation, rules, programs or procedures, or to participate in any government administrative or judicial proceeding.

*Further provided, however:* That nothing contained in this order shall prohibit respondent from exchanging technical, scientific or safety information on infant formula with any other infant formula manufacturer or from licensing proprietary information or technology, provided that such information does not relate to the advertising of infant formula directly to the consumer through the mass media.

*Further provided, however:* That nothing contained in this Order shall prohibit respondent from taking action to challenge or prevent advertising, promotion or marketing practices that it reasonably believes would be false or deceptive within the meaning of section

5 of the FTC Act, the Lanham Act or otherwise contrary to law.

##### III

*It is further ordered* That respondent shall:

A. Within thirty (30) days of the date this order becomes final, provide a copy of this order to all of its directors, officers, management employees, and sales representatives with any responsibility for the manufacture, sale or marketing of infant formula in the United States, its territories and possessions.

B. For a period of five (5) years from the date on which this order becomes final, and within thirty (30) days of the date on which any person becomes a director, officer, management employee, or sales representative of respondent with responsibility for the manufacture, sale or marketing of infant formula in the United States, its territories and possessions, provide a copy of this order to such person.

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III A. and B. of this order, except directors and sales representatives, to sign and submit to respondent within thirty (30) days of the receipt thereof a statement that: (1) Acknowledges receipt of this order; (2) represents that the undersigned has read and understands this order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with this order may subject respondent to liability.

##### IV

*It is further ordered* That respondent shall:

A. File a verified, written report with the Commission within ninety (90) days of the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may by written notice to respondent require, setting forth in detail the manner and form in which it has complied and is complying with this order.

B. For a period of five (5) years from the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by parts I-IV of this order; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in respondent that may affect compliance with this order, including, but not limited to, dissolution, assignment or sale resulting in the

emergence of a successor corporation, the creation or dissolution of subsidiaries, change of name, or change of address.

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Abbott Laboratories.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested parties. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On June 10, 1992, the Commission issued an administrative complaint alleging that respondent Abbott Laboratories ("Abbott") and the other U.S. infant formula companies entered into an agreement not to use mass media advertising to promote formula directly to the public during the 1980's in violation of section 5 of the Federal Trade Commission Act. The complaint also alleged that Abbott and the other infant formula companies agreed to the exchange of marketing information that was likewise in violation of section 5.

Abbott has signed an Agreement Containing a Consent Order to Cease and Desist in order to resolve these allegations. Under Paragraph II.A of the proposed order, Abbott would be ordered to cease and desist from intentionally exchanging information with any of its competitors relating to the advertising of infant formula through the mass media directly to the consumer. Paragraph II.B would prohibit Abbott from entering into or attempting to enter into any agreement or enforcing any agreement with any competitor to refrain from or restrict otherwise legal infant formula marketing practices in the United States. Paragraph II.C would prohibit Abbott from attempting to gain passage of an industry-wide restraint on mass media advertising or to solicit adherence to any such restraint on mass media advertising directly to the consumer.

The proposed order contains several provisos. First, it states that nothing contained in the proposed order shall be construed to prevent respondent from exercising rights permitted under the First Amendment to the United States Constitution to petition any government executive agency or legislative body. Secondly, the proposed order would not prohibit respondent from exchanging

technical, scientific or safety information on infant formula with any other infant formula manufacturer or from licensing proprietary information or technology. Finally, the proposed order would allow respondent to take action to challenge or prevent advertising, promotion or marketing practices that it reasonably believes would be false or deceptive within the meaning of section 5 of the FTC Act, the Lanham Act or otherwise contrary to law.

The remainder of the proposed order contains provisions regarding compliance, record-keeping, and distribution of the order to various entities. Paragraph III would require Abbott to distribute copies of the order, if finally accepted by the Commission, to certain officers, agents, representatives and certain employees. Paragraph IV would require Abbott to file periodic compliance reports with the FTC for a period of five years, to maintain and make available to the FTC all records adequate to describe in detail any action taken by Abbott in connection with the activities covered by any provision in the order, and to notify the Commission of any changes in corporate structure at least thirty days prior to any such proposed change.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify in any way their terms.

Donald S. Clark,  
Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Abbott Laboratories, Docket No. 9253

I concur in acceptance of the consent order for publication only insofar as the order is based on allegations that Respondent entered into a conspiracy with others to refrain from advertising infant formula through the mass media directly to the consumer.

[FR Doc. 93-27550 Filed 11-8-93; 8:45 am]  
BILLING CODE 6750-01-M

[Dkt. 9257]

Del Dotto Enterprises, Inc., et al.;  
Proposed Consent Agreement With  
Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.  
ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent

agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based corporation and its officers from making false claims regarding real estate, credit, investments, or business opportunities in the future. In addition, the proposed agreement would prohibit the respondents from misrepresenting that any endorsement for a product or service represents the typical or ordinary experience of previous users, and from representing that any advertisement is not paid advertising. DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Chris Couillou or Andrea Foster, FTC/Atlanta Regional Office, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367. (404) 347-4837.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Agreement Containing Consent Order To Cease and Desist

In the Matter of Del Dotto Enterprises, Inc., a corporation, David P. Del Dotto, individually and as an officer of Del Dotto Enterprise, Inc., and Yolanda Del Dotto, individually and as an officer of Del Dotto Enterprises, Inc.

The agreement herein, by and between Del Dotto Enterprises, Inc., a corporation, by its duly authorized officer, and David Del Dotto and Yolanda Del Dotto, individually and as officers of said corporation, hereafter sometimes referred to as respondents, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Del Dotto Enterprises, Inc., ("DDE") is a corporation organized,

existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1500 J Street in the City of Modesto, California.

Respondents David Del Dotto and Yolanda Del Dotto are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; provided, however, that respondents, without admitting the findings of fact and conclusions of law contained in appendix A attached hereto, waive any right to contest in administrative proceedings the findings and conclusions contained in said Appendix should the Commission make said findings and conclusions and include them in its decision; provided further, that in the event the Commission makes such findings and conclusions, then the decision shall also expressly provide that, in any action which may be brought under section 19(a)(2) of the Federal Trade Commission Act, as amended, the said findings and conclusions shall not be deemed conclusive within the meaning of section 19(c)(1)(B)(i) of the Federal Trade Commission Act, as amended; and provided further that nothing contained in this Paragraph or in Appendix A shall modify or impair any recital of Paragraph 6 of this Agreement.

(c) All rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement;

(d) Any claim that the signing of this agreement and the Commission's decision and order pursuant thereto bar any action under section 19 of the Federal Trade Commission Act, as amended, or that the Commission's decision containing the findings and conclusions set out in this Agreement constitute an inadequate basis for an action under section 19 of the Federal Trade Commission Act, as amended; and

(e) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint, or in appendix A.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## Order

As used in this order, the term "business opportunity" means an activity engaged in for the purpose of making a profit.

I

*It is ordered* that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of the Cash Flow System or any other product or service concerning investments, credit, business opportunities, or real estate, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Respondents will teach customers how every homeowner can get a government home improvement loan;

B. Every homeowner can get a loan that is insured under section 2 of Title I of the National Housing Act, 12 U.S.C. 1703;

C. Respondents will show customers how to pocket some portion of the proceeds of a government home improvement loan;

D. Customers can pocket some portion of the proceeds of a loan that is insured under section 2 of Title I of the National Housing Act, 12 U.S.C. 1703;

E. Respondents will teach customers how they can get over \$100,000 of unsecured credit through credit cards;

F. Customers can get over \$100,000 of unsecured credit through credit cards regardless of their creditworthiness and income;

G. Respondents will show customers how they can get loans for 1 to 3% under circumstances normally and expectably encountered by consumers;

H. Respondents will show customers how they can get the government to make all of their mortgage payments on rental property;

I. The government will make all of a customer's mortgage payments on rental property;

J. Hundreds of thousands of respondents' customers have made substantial sums of money through use of the Cash Flow System;

K. Customers who attempt to use the Cash Flow System typically profit through investments in real estate; and,

L. The consumer testimonials that have appeared in the advertisements for the Cash Flow System referred to in Paragraph Four of the Complaint reflect the typical or ordinary experience of members of the public who have attempted to use the Cash Flow System.

## II

*It is further ordered* that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of the Cash Flow System or any other product or service concerning investments, credit, business opportunities, or real estate, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. The book entitled "National Foreclosure Network Wholesale Buyer's Guide" includes an extensive list of foreclosure or tax sale properties; and

B. A telephone consulting service, to personally assist customers in making real estate deals, is included in the price paid for the product or service.

## III

*It is further ordered* that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of the Cash Flow System or any other product or service concerning investments, credit, business opportunities, or real estate, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, the following:

A. The availability, terms or conditions of any loan, grant or credit from any source for any purpose; and

B. The contents or scope of any product or service, including, but not limited to, any book or other writing, or audio or video tape.

## IV

*It is further ordered* that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of the Cash Flow System or any other product or service concerning investments, credit, business opportunities, or real estate, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, the performance, benefits, efficacy or success rate of any such product or service, unless such representation is true and unless at the time of making such representation respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, competent and reliable scientific evidence shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

## V

*It is further ordered* that the respondents, Del Dotto Enterprises, a corporation, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR § 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who attempt to use the product or service, unless such is the fact.

## VI

*It is further ordered* that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of the Cash Flow System or any other product or service concerning investments, credit, business opportunities, or real estate, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, when representing to consumers the existence of a guarantee, warranty or refund policy, do forthwith cease and desist from:

a. Using the terms "Satisfaction Guarantee," "Money Back Guarantee," "Free Trial Offer," or similar representations in advertising unless they refund the full purchase price of the advertised product at the purchaser's request;

b. Failing to disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to a guarantee, warranty or refund policy; and

c. Failing to refund money in accordance with the terms of a guarantee, warranty or refund policy within a reasonable period of time after a consumer complies with the conditions for receiving a refund. For purposes of this paragraph, "a reasonable time period" shall be:

(1) That period of time specified in respondents' solicitation if such period is clearly and conspicuously disclosed to the purchaser in the solicitation; or

(2) If no period of time is clearly and conspicuously disclosed, a period of thirty (30) days following the date that purchaser complies with the conditions for receiving a refund.

## VII

*It is further ordered*, that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any product or service, in

or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for any ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosures:

"The Program You Are Watching Is a Paid Advertisement for [the Product or Service]."

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

#### VIII

It is further ordered that Del Dotto Enterprises, its successors and assigns, and its officers, and David P. Del Dotto and Yolanda Del Dotto, individually and as officers of Del Dotto Enterprises, and their respective agents, representatives, and employees, acting directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to deliver goods, transfer interests in real estate or perform services ordered by purchasers from respondents within a reasonable time period. If delivery, transfer or performance cannot be completed within such a reasonable time period, then respondents shall clearly and conspicuously offer in writing to such purchaser, no later than at the expiration of the reasonable time period, an option either to consent to a delay in delivery, transfer or performance or to cancel his or her order and receive a full refund which shall be sent by respondents by first class mail within seven (7) working days of the date on which respondents receive such

purchaser's notice of cancellation. For purposes of this paragraph, "a reasonable time period" shall be:

(a) That period of time specified in respondents' solicitation if such period is clearly and conspicuously disclosed to the purchaser in the solicitation; or

(b) If no period of time is clearly and conspicuously disclosed, a period of thirty (30) days following the date that the purchaser's order is received by respondents or by a designated agent of respondents.

#### IX

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

#### X

It is further ordered that respondent Del Dotto Enterprises shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolutions of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

#### XI

It is further ordered that respondents David P. Del Dotto and Yolanda Del Dotto shall, for a period of ten (10) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of their present business or employment and of their affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this Part XI shall not

affect any of the obligations arising under this Order.

#### XII

It is further ordered that respondents shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order.

B. For a period of ten (10) years from the date of entry of this Order, provide a copy of this Order to each of respondents' principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

#### XIII

It is further ordered that respondents shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

#### Appendix A

In the Matter of Del Dotto Enterprises, Inc., a corporation, David P. Del Dotto, individually and as an officer of Del Dotto Enterprises, Inc., and Yolanda Del Dotto, individually and as an officer of Del Dotto Enterprises, Inc.

#### Findings of Fact and Conclusions of Law

1. Respondent Del Dotto Enterprises, Inc., ("DDE") is a California corporation whose office and principal place of business is located at 1500 J Street, Modesto, California.

Respondent David Del Dotto is president and a shareholder of DDE. Individually or in concert with others, David Del Dotto has formulated, directed, controlled, and/or participated in the business activities, policies, acts, and practices of DDE.

Respondent Yolanda Del Dotto is secretary and a shareholder of DDE. Individually or in concert with others, Yolanda Del Dotto has formulated, directed, controlled, and/or participated in the business activities, policies, acts, and practices of DDE.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

3. Respondents have advertised, offered for sale, sold, and distributed products and services, including, but not limited to, a set of books and audio cassette tapes,

collectively known as the "Cash Flow System," and computer hardware and software. These products and services were promoted by various means, including, but not limited to, through program-length advertisements and at seminar presentations held at public facilities in various locations in the United States. The Cash Flow System includes information about purchasing real estate and obtaining credit.

4. The acts and practices of respondents described in these findings have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents have disseminated or have caused to be disseminated program-length advertisements for the Cash Flow System. These advertisements have included, but are not limited to, programs with the following titles: Financial Freedom and Wealth Building in America Today (Part VI) [hereinafter "Financial Freedom VI"]; Financial Freedom and Wealth Building in America Today (Part V) [hereinafter "Financial Freedom V"]; Financial Freedom and Wealth Building in America Today (Part IV) [hereinafter "Financial Freedom IV"]; How To Make Nothing But Money; Financial Freedom and Wealth Building in America Today (Part II) [hereinafter "Financial Freedom II"]; and Financial Freedom and Wealth Building in America Today [hereinafter "Financial Freedom"]. These advertisements contain the following statements, among others:

A. "Volume 8 is the government loan book, which teaches you all about government loans, how to get loans for as little as 3% interest, how any homeowner can go out, and immediately get a loan for \$17,500, and countless more loan programs that are available to you right now." [Quoted from Financial Freedom VI, Financial Freedom V, Financial Freedom IV, How to Make Nothing But Money, Financial Freedom II, and Financial Freedom]

B. "How anybody who owns a home can get a loan for \$17,500!" [Quoted from Financial Freedom VI, Financial Freedom V, Financial Freedom IV, How to Make Nothing But Money, Financial Freedom II, and Financial Freedom]

C. "In Volume 8, this is one of my favorite books, because this is my government loan book. It will teach you all about how to get loans for as little as 1% to 3% interest; and where to go to the government to get 'em. And not only that, how would you like to have a loan for \$17,500 to upgrade your house, and do the work yourself and actually put money into your pocket. This volume will show you how to do that." [Quoted from Financial Freedom II]

D. "Volume 3 is one of my favorite courses. This is the credit course. Now what I teach you in this book is I teach you how to get good credit. It's very important: how to clear up your negative credit and how to co-mortgage with other people. Not only that, it also contains how to get over \$100,000 of unsecured credit for all of you out there that need credit cards." [Quoted from Financial Freedom VI and How to Make Nothing But Money]

E. "Volume 3 is the credit course that will teach you how to qualify for bank loans, how to establish good credit, how to co-mortgage with other people, and how to apply for over \$100,000 of unsecured credit." [Quoted from Financial Freedom VI, Financial Freedom V, Financial Freedom IV, How to Make Nothing But Money, Financial Freedom II, and Financial Freedom]

F. "You're going to receive the 'National Foreclosure Network Wholesale Buyer's Guide.' This booklet contains invaluable information on over 100,000 discounted foreclosure vacation timeshare properties, over 16,000 resolution trust foreclosures throughout the nation, over 3000 tax sale properties that can be purchased for under \$1000, and hundreds of V.A. homes that can be purchased with only \$500." [Quoted from Financial Freedom IV]

G. "Dave Del Dotto's toll-free telephone consultants are available to personally assist you in all deals." [Quoted from Financial Freedom VI, Financial Freedom V, and Financial Freedom Part IV]

H. "How to get loans for as little as 3% interest." [Quoted from Financial Freedom VI, Financial Freedom V, Financial Freedom IV, How to Make Nothing But Money, Financial Freedom II, and Financial Freedom]

I. "Now Volume 8, this is one of my favorite books, because this is my government loan book. It will teach you all about how to get loans for as little as 1% to 3% interest. How anybody can go to the government and get a loan for \$17,500 to upgrade their house, and you can actually put money into your pocket under this program. Folks, this will also show you how to get the government to make all your payments on your properties through Section 8 housing programs. It's available everywhere in America." [Quoted from Financial Freedom VI and How to Make Nothing But Money]

J. "You can do what hundreds of thousands of others are doing, you can get wealth, security, financial freedom and peace for the rest of your life." [Quoted from Financial Freedom VI, Financial Freedom V, Financial Freedom IV, How to Make Nothing But Money, and Financial Freedom II]

K. "Over 500,000 people, just like the ones you see on this television special, have become avid Dave Del Dotto students, and participants in his Cash Flow System, the most dynamic wealth building home study course available in the country today. I think it's important to know that you can do exactly what they're doing, and go on to achieve your dreams, and accumulate as much wealth as you're willing to work for." [Quoted from Financial Freedom VI, Financial Freedom V, Financial Freedom IV, How to Make Nothing But Money, and Financial Freedom II]

L. "We're here today at one of our national seminars and I wanted to take this opportunity to show you how people from around the nation are taking time to come to these seminars and learn how to accomplish their goals, achieve their dreams and gain wealth building knowledge. These are people just like yourself who've made the decision to finally go for it—to finally go for their

dreams." [Quoted from Financial Freedom V and II]

M. "Hello, I'm Dave Del Dotto. Would you give up thirty minutes of your time if it could change your life from what you have now to the life that you really want to live? Would you give up thirty minutes of your time if it meant that you could pay off all your bills, buy the house and the car you've always wanted to own and have the financial freedom you've always wanted? In the next thirty minutes, I'm going to show how you can do these things. I'm even going to guarantee it." [Quoted from Financial Freedom]

N. "Those are people like you and me, and there are thousands more like them. Let me ask you something? Did you think those people are any different than you? Well let me tell you, they're not. They only did one thing that you haven't done, they called the 800 number that you see on the screen. They called these operators and they bought this Cash Flow System. And they did it for less money than it costs for the average portable color television set. They bought themselves financial freedom for the rest of their lives. This Cash Flow System is an informative collection of books and tapes that took years to develop. It works for anybody who is willing to use it. And the proof is in the fact that my students are from all walks of life, housewives, teenagers, lawyers, school teachers, immigrants, married couples, single people, even Harvard graduates." [Quoted from Financial Freedom]

O. "So I would suggest everybody right now get into the business right now if you want to make a fortune." [Quoted from Financial Freedom II]

P. "If you're really sincere about making money, the money that you need to achieve your goals, then you won't need a guarantee. But it will do for you what it did for me and what it does for thousands of people throughout the country." [Quoted from How to Make Nothing But Money]

Q. "I would recommend, for anybody out there, believe me, when I tell you this, I knew nothing about real estate two years ago. Go for it. Believe me, go for it! Get the knowledge that you need through the books and tapes that Dave Del Dotto sells, and do it. It really works. Believe me, it works." [Quoted from How to Make Nothing But Money, testimonial of Dennis Smith]

R. "I can't, you know, stress enough about how to, how to encourage you to get the tapes to do this, because I'm just an average Joe, and, and if I can learn this, believe me, you can." [Quoted from Financial Freedom VI and How to Make Nothing But Money, testimonial of Dan O'Connor]

S. "It's being done. It can be done. We're doing it. We're average people. Everyone can do this." [Quoted from Financial Freedom VI and Financial Freedom II, testimonial of Reggie Brooks]

6. Through the use of the statements contained in advertisements and other communications, including but not necessarily limited to the advertisements referred to in FINDING FIVE, respondents have represented, directly or by implication, that:

A. Respondents' book entitled "Treasury of Government Loans," which is volume 8 of

the Cash Flow System, will teach customers how every homeowner can immediately get a government home improvement loan of \$17,500;

B. Respondents' book entitled "Treasury of Government Loans" will show customers how to pocket some portion of the proceeds of a \$17,500 government home improvement loan;

C. Respondents' book entitled "Your Credit, The Key to Financial Resources," which is volume 3 of the Cash Flow System, will teach customers how they can get over \$100,000 of unsecured credit through credit cards;

D. The "National Foreclosure Network Wholesale Buyer's Guide" includes an extensive list of foreclosure and tax sale properties;

E. A telephone consulting service, to personally assist customers in making real estate deals, is included in the price paid for the Cash Flow System;

F. Respondents' book entitled "Treasury of Government Loans" shows customers how they can get loans for 1 to 3% under circumstances normally and expectably encountered by consumers; and

G. Respondents' book entitled "Treasury of Government Loans" will show customers how they can get the government to make all of their payments on rental property.

7. The representatives set forth in FINDING SIX were, and are, false and misleading because:

A. Respondents' book entitled "Treasury of Government Loans" does not teach customers how every homeowner can immediately get a government home improvement loan for \$17,500. Under the pertinent loan program, Section 2 of Title I of the National Housing Act, 12 U.S.C. § 1703, consumers must meet eligibility requirements including, but not necessarily limited to, creditworthiness.

B. Respondents' book entitled "Treasury of Government Loans" does not show customers how to pocket some portion of the proceeds of a \$17,500 government home improvement loan. It does not contain any discussion of pocketing proceeds. In addition, the loans guaranteed under the pertinent loan program, Section 2 of Title I of National Housing Act, 12 U.S.C. § 1703, are only for property improvement and are not supposed to be pocketed.

C. Respondents' book entitled "Your Credit, The Key to Financial Resources" does not teach customers how they can get over \$100,000 of unsecured credit through credit cards. It does not contain any discussion of customers obtaining over \$100,000 of unsecured credit through credit cards. In addition, the prerequisites for the issuance of credit cards make it virtually impossible for all but those with extremely high incomes and very good credit histories to obtain the amount of unsecured credit indicated.

D. The "National Foreclosure Network Wholesale Buyer's Guide" does not contain an extensive list of foreclosure and tax sale properties.

E. The telephone consulting service is not included in the price paid for the Cash Flow System.

F. Respondents' book entitled "Treasury of Government Loans" does not show

customers how they can get loans for 1 to 3% under circumstances normally and expectably encountered by consumers. The 1% to 3% loans mentioned in respondents' books are either available in very limited circumstances or are not longer available.

G. Respondents' book entitled "Treasury of Government Loans" does not show customers how they can get the government to make all of their payments on rental property.

8. In their advertising and sale of the Cash Flow System, respondents have represented, directly or by implication, that respondents guarantee a refund of the purchase price. Respondents have failed to adequately disclose that respondents charge a restocking fee of 10% of the purchase price on refunds made under their guarantees. This fact would be material to consumers in their purchase decisions regarding the product. The failure to adequately disclose this fact, in light of the representation made, was, and is, a deceptive practice.

9. Through the use of the statements contained in advertisements and other communications, including but not necessarily limited to the advertisements referred to in FINDING FIVE, respondents have represented, directly or by implication, that:

A. Hundreds of thousands of respondents' customers have made substantial sums of money through use of the Cash Flow System;

B. Customers who attempt to use the Cash Flow System typically profit through investments in real estate; and,

C. The consumer testimonials that appear in advertisements for the Cash Flow System reflect the typical or ordinary experience of members of the public who have attempted to use the Cash Flow System.

10. The representations set forth in Finding Nine were, and are, false and misleading because:

A. Hundreds of thousands of respondents' customers have not made substantial sums of money through use of the Cash Flow System;

(B) Customers who attempt to use the Cash Flow System do not typically profit through investments in real estate; and,

C. The consumer testimonials that appear in advertisements for the Cash Flow System do not reflect the typical or ordinary experience of members of the public who have attempted to use the Cash Flow System.

11. Through the use of the statements contained in advertisements and other communications, including but not necessarily limited to the advertisements referred to in Finding Five, respondents have represented, directly or by implication, that at the time they made the representations set forth in Finding Nine, respondents possessed and relied upon a reasonable basis that substantiated such representations.

12. At the time they made the representations set forth in Finding Nine, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Finding Eleven was, and is, false and misleading.

13. Through the advertising and dissemination of its program-length advertisements, including but not necessarily

limited to Financial Freedom, respondents have represented, directly or by implication, that these advertisements are independent television programs and are not paid commercial advertising.

14. The advertisements referred to in Finding Thirteen are not independent television programs and are paid commercial advertising. Therefore, the representation set forth in Finding Thirteen was, and is, false and misleading.

15. Respondents have offered for sale and sold computer hardware and software to customers in various locations in the United States. In connection with these sales, respondents have represented, directly or by implication, that computer hardware and software sold to customers would be delivered to the customers within a specified period of time or a reasonable period of time.

16. The computer hardware and software referred to in Finding Fifteen that were sold to customers have not in many instances been delivered to them or have not been delivered to them within the specified period of time or within a reasonable period of time. Further, in many instances, respondents have failed to provide refunds of money paid by such customers or have failed to provide them within a reasonable period of time. Therefore, the representation set forth in Finding Fifteen was, and is, false and misleading.

17. Respondents have represented, directly or by implication, in the sale of goods and services that refunds would be made within a reasonable period of time in accordance with the terms of the guarantee or warranty offered with such goods and services.

18. Respondents have represented, directly or by implication, that refunds would be made within a reasonable period of time on goods and services returned to DDE with authorization from DDE.

19. In numerous instances, customers who have returned goods or services purchased from respondents in accordance with the terms of the offered guarantee or warranty or with authorization from DDE have not received refunds from respondents or have received refunds from respondents only after unreasonable delay and numerous requests to respondents for their refunds. Therefore, the representations set forth in Findings Seventeen and Eighteen were, and are, false and misleading.

20. The acts and practices of respondents as alleged above in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of section 5(a) of the Federal Trade Commission Act.

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Del Dotto Enterprises, Inc., David Del Dotto and Yolanda Del Dotto.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether



it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Specifically, the complaint alleges that respondents have made numerous misrepresentations concerning a set of books and audio cassette tapes, collectively known as the "Cash Flow System" ("CFS"), sold by them. It alleges that the respondents made false and misleading representations that the CFS would teach customers (1) How every homeowner could get a government home improvement loan of \$17,500, (2) how to pocket some portion of the proceeds of such a loan, (3) how to get over \$100,000 of unsecured credit through credit cards, (4) how to get government loans for 1 to 3% under normal and expectable circumstances, and (5) how to get the government to make all payments on rental property. The complaint also alleges that respondents made false and misleading representations that a telephone consulting service was included in the price of the CFS and that the book entitled the "National Foreclosure Network Wholesale Buyer's Guide" included an extensive list of foreclosure and tax sale property. In addition, the complaint alleges that respondents failed to adequately disclose a 10% restocking fee that customers were charged on refunds made for the CFS and that they made false and misleading representations that their program-length advertisements were independent television programs and not paid commercial advertising. The complaint also alleges that the respondents made false, misleading and unsubstantiated representations that hundreds of thousands of respondents' customers made substantial sums of money through use of the CFS, that customers who attempted to use the CFS typically profited through investment in real estate, and that the consumer testimonials used by respondents in their advertisements reflected the typical experience of members of the public. Furthermore, the complaint alleges that respondents made false and misleading representations that computer hardware and software sold to customers would be delivered within a specified time or a reasonable period of time and that respondents failed to deliver within the time represented.

The proposed consent order would provide the following relief in the paragraphs indicated:

Paragraph I prohibits respondents from making false claims challenged in the complaint concerning real estate, credit, investment or business opportunities. "Business opportunity" is defined in the order as an activity engaged in for the purpose of making a profit.

Paragraph II prohibits respondents from misrepresenting that the "National Foreclosure Network Wholesale Buyer's Guide" includes an extensive list of foreclosure or tax sale properties and that a telephone consulting service is included in products or services concerning real estate, credit, investment or business opportunities.

Paragraph III prohibits respondents from misrepresenting the availability of loans or

credit in relation to the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of products or services concerning real estate, credit, investment or business opportunities. Paragraph III also prohibits the misrepresentation of the contents or scope of such products.

Paragraph IV prohibits respondents from making any performance, benefits or efficacy claims about products or services concerning real estate, credit, investment or business opportunities unless the claims are true and unless respondents possess reliable evidence that substantiates such claims at the time they are made.

Paragraph V prohibits respondents from representing that any endorsement of a product or service represents the ordinary experience of consumers attempting to use such product or service unless such is the fact.

Paragraph VI, with regard to products or services concerning real estate, credit, investment or business opportunities, prohibits respondents from (a) representing that they offer a satisfaction guarantee unless they refund the full purchase price of the advertised product at the customer's request; (b) failing to disclose conspicuously any material conditions applying to a warranty when representing that one is offered; and (c) failing to refund money in accordance with their guarantee or refund policy within a reasonable time after consumers comply with conditions for receiving a refund.

Paragraph VII prohibits respondents from representing that their advertisements are not paid advertising. It also requires that respondents disclose at the beginning of advertisements of fifteen minutes or longer and immediately before ordering instructions in such advertisements that the program is a paid advertisement.

Paragraph VIII prohibits respondents from failing to deliver goods or perform services ordered by purchasers from respondents within a reasonable time period and provides for standards for refunding money when delivery or performance is not accomplished within a reasonable time. In addition, Paragraph VIII prohibits respondents from failing to transfer interests in land that have been ordered by purchasers in connection with the advertising, promotion, offering for sale or sale of goods or services by respondents.

The consent agreement contains an appendix of findings of fact and conclusions of law to which the respondents, while not admitting, waive their right to contest in the administrative proceeding. These findings essentially correspond to the allegations of the complaint. Additionally, the consent agreement seeks to preserve the Commission's option to seek consumer redress. Paragraph 4(d) provides that the respondents waive any argument that the proposed settlement would constitute an inadequate basis for an action under Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b, and that acceptance of the consent would bar the Commission from pursuing a Section 19 action.

The remaining provisions are standard record keeping and reporting provisions

designed to ensure that proposed respondents remain in compliance with the other provisions of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93-27551 Filed 11-8-93; 8:45 am]

BILLING CODE 6750-01-M

[File No. 931 0098]

### The Valspar Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Minnesota-based corporation to divest, within 12 months of the order, certain assets it proposes to acquire from Cargill, to an independent corporation that Valspar forms as a successor corporation to McWhorter, and to obtain Commission approval of the divestiture arrangement prior to consummation. In addition, the consent agreement would require McWhorter and the new company, for 10 years, to obtain the Commission's approval before acquiring any stock or other interest in any entity that manufactures coating resins in the United States.

**DATES:** Comments must be received on or before January 10, 1994.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Robert Tovsky, FTC/S-3302, Washington, DC 20580. (202) 326-2634.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with

Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of assets by The Valspar Corporation ("Valspar"), through its wholly-owned subsidiary McWhorter, Inc. ("McWhorter"), from Cargill, Incorporated, which acquisition is more fully described at paragraph I.(A) below, and it now appearing that Valspar and McWhorter are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts;

*It is hereby agreed* by and between Valspar and McWhorter, by their duly authorized officers, and their attorneys, and counsel for the Commission that:

1. Proposed respondent Valspar is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1101 Third Street South, Minneapolis, Minnesota 55415.

2. Proposed respondent McWhorter is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 400 East Cottage Place, Carpentersville, Illinois 60110.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and

decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, or true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Nothing contained in this agreement shall bar the Commission from seeking judicial relief to enforce the Order, to enforce the Agreement to Hold Separate, or to extend the Agreement to Hold Separate.

9. Proposed respondents have each read the proposed complaint and Order contemplated hereby. Proposed respondents each understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents each further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

#### Order

I .

As used in this Order, the following definitions shall apply:

(A) "Acquisition" means the acquisition described in the Sales and Purchase of Assets Agreement entered into on May 19, 1993 by which McWhorter has agreed to acquire and Cargill, Incorporated has agreed to convey certain rights and interests in, and title to, certain of the assets of Cargill.

(B) "Acquired Assets" means all assets, rights, title, interest, and businesses that Valspar acquires from Cargill, Incorporated pursuant to the Acquisition, as defined in Paragraph I.(A), above.

(C) "Valspar" means The Valspar Corporation, all of its directors, officers, employees, agents, and representatives, all of its predecessors, subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(D) "McWhorter" means McWhorter, Inc., a wholly-owned subsidiary of Valspar, all of its directors, officers, employees, agents, and representatives, all of its predecessors, subsidiaries, divisions, groups and affiliates (including, but not limited to, the Properties to Be Divested as hereinafter defined) controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors (including, but not limited to, Newco as here in after defined) and assigns of any of the foregoing.

(E) "Cargill" means the Resin Products Division of Cargill, Incorporated, all of its predecessors, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(F) "Cargill Technology" means general and specific information developed by Cargill or used in any product sold by Cargill on or before the date of the Acquisition, including all technology transferred in the Acquisition, all such information being sufficiently detailed for the commercial production, sale and use of such products, including, but not limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals,

and formulations. Cargill Technology shall exclude information to the extent disclosure of such information by Cargill is prohibited by a contract between Cargill and any coating producer.

(G) "McWhorter Technology" means general and specific information developed by McWhorter or used in any product sold by McWhorter to customers other than Valspar on or before the date of the Acquisition, all such information being sufficiently detailed for the commercial production, sale and use of such products, including, but not limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and formulations. McWhorter Technology shall exclude information to the extent disclosure of such information by McWhorter is prohibited by a contract between McWhorter and any coating producer.

(H) "Newco" means McWhorter or a corporation to be formed by Valspar and McWhorter as a successor corporation to McWhorter, in accordance with Paragraph II. (C) of this Order, and through which Valspar shall divest, in a manner that receives the prior approval of the Commission, the Properties to Be Divested; and includes without limitation all of Newco's subsidiaries, divisions, groups and affiliates controlled by any of the foregoing, all of their respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of any of the foregoing.

(I) "Properties to Be Divested" means the Acquired Assets and all facilities operated by Valspar at Carpentersville, Illinois, Portland, Oregon, and Philadelphia, Pennsylvania, utilized in the production of Coating Resins, including, without limitation, all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property, and all right, title and interest in and to real property, together with appurtenances, licenses and permits.

(J) "Valspar Retained Properties" means all tangible and intangible assets and businesses of Valspar and McWhorter other than those included within the Properties to Be Divested.

(K) "Commission" means the Federal Trade Commission.

(L) "Coating Resins" means alkyd resins, modified alkyd resins, saturated polyester resins, and oil-modified

urethane resins (excluding powder coating resins), supplied for use in formulating surface coatings. Such resins generally are formed from the reaction of polybasic acids or anhydrides and polyhydric alcohols.

(M) "Viability and Competitiveness" of the Properties to Be Divested and of the Valspar Retained Properties means that such respective properties are capable of functioning independently and competitively in the Coating Resins business.

## II

### *It is ordered That:*

(A) Within twelve (12) months of the date this Order becomes final, Valspar shall divest, absolutely and in good faith, the Properties to Be Divested, and shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the Viability and Competitiveness of the Properties to Be Divested and to assure the Viability and Competitiveness of the Valspar Retained Properties. Provided, however, that this requirement shall not prohibit any shareholder of Valspar from participating, in his or her personal capacity as a shareholder of Valspar, in the distribution of the authorized common stock of Newco, pursuant to Paragraph II. (D) of this Order.

(B) Valspar shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as Valspar has divested all the Properties to Be Divested or such other time as stated in said Agreement.

(C) Valspar shall divest the Properties to Be Divested by forming, in a manner that receives the prior approval of the Commission, Newco, with at least sufficient authorized common stock to comply with the provisions of this Order and with by-laws obligating Newco to be bound by this Order and containing provisions insuring compliance with Paragraph II. (E) hereof, to which McWhorter shall transfer the Properties to Be Divested by merger with Newco or otherwise. Valspar shall make all necessary regulatory filings to ensure that such common stock is registered, and shall also ensure that the stock is registered for trading on the NASDAQ National Market System or listed for trading on the New York Stock Exchange or the American Stock Exchange. Valspar shall demonstrate the Viability and Competitiveness of the Properties to Be Divested and of the Valspar Retained Properties, respectively, in its application for approval of the proposed

divestiture. The purpose of the divestiture of the Properties to Be Divested is (1) to ensure the continuation of the Properties to Be Divested as an ongoing, viable business engaged, in competition with the Valspar Retained Properties and others, in the manufacture and sale of Coating Resins; (2) to ensure the continuation of the Valspar Retained Properties as an ongoing viable business engaged, in competition with the Properties to Be Divested and others, in the manufacture and sale of Coating Resins; and (3) to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) Valspar shall divest the Properties to Be Divested, only to an acquirer, including the shareholders of Valspar as a group, and in a manner that receives the prior approval of the Commission, including by distributing the shares of Newco pro rata to the stockholders of record of Valspar.

(E) Valspar (excluding, for purposes of this Paragraph II. (E), Newco), McWhorter and Newco shall provide that:

1. After completion of the Acquisition and prior to the divestiture of Newco by distribution of the Newco stock to the stockholders of Valspar or otherwise, Valspar shall vote the stock of Newco for the election of an interim board of directors meeting the requirements of Paragraph III. j of the Agreement to Hold Separate, to serve until the election of directors by the stockholders of Newco in accordance with Paragraph II. (E)3 of this Order;

2. Within seven (7) days of the distribution or other divestiture of the Newco stock, any director of Newco who is also a Valspar director, officer, employee or agent shall resign from the Newco Board, and the remaining directors of Newco shall designate a new director or new directors in accordance with this Order who are not directors, officers, employees or agents of Valspar;

3. Newco shall within twelve (12) months of the distribution or other divestiture of the Newco stock call a stockholders' meeting for the purpose of electing directors;

4. No nominee for the board of directors of Newco shall, at the time of his or her election, be an officer, director or employee of Valspar or shall hold, or have under his or her direction or control, greater than 5 percent of the outstanding common stock of Valspar;

5. No officer, director or employee of Valspar shall concurrently serve as an officer, director or employee of Newco nor shall any officer, director or employee of Newco serve concurrently

as an officer, director or employee of Valspar;

6. No officer or director of Newco shall hold, or have under his or her direction or control, greater than 5 percent of the outstanding common stock of Valspar; and officers and directors of Newco in aggregate, shall not concurrently hold, or have under their direction or control, greater than 10 percent of the outstanding common stock of Valspar;

7. C. Angus Wurtele shall not, as long as he remains an officer or director of Valspar, hold, or have under his direction or control, more than 12.4 percent of the outstanding common stock of Newco, and the other directors and officers of Valspar in aggregate, shall not concurrently hold, or have under their direction or control, greater than 5 percent of the outstanding common stock of Newco;

8. No officer or director of Valspar shall increase by purchase his or her holdings of Newco authorized common stock beyond the percentage that such officer or director holds as a result of any initial distribution of such stock pursuant to Paragraph II. (D) of this Order, nor shall such officer or director be permitted to be a creditor of Newco;

9. No officer or director of Valspar shall concurrently serve as an officer or director of any entity that holds or controls, as trustee or otherwise, greater than five percent of the outstanding common stock of Newco, and no officer or director of Newco shall concurrently serve as an officer or director of any entity that holds or controls, as trustee or otherwise, greater than five percent of the outstanding common stock of Valspar;

10. Except as provided for in Paragraph II. (E)1 and Paragraph II. (E)2 of this Order and except with respect to organization matters prior to the divestiture of Newco by distribution of the Newco stock to the stockholders of Valspar or otherwise, no officer or director of Valspar, who concurrently holds or has under his or her direction or control more than one percent of the outstanding common stock of Newco shall, in his or her personal capacity as a shareholder of Newco or otherwise, vote any stock of Newco which he or she shall hold or which shall be held under his or her direction or control, nor shall any officer, director or employee of Valspar influence, or attempt to control, supervise or influence, directly or indirectly, any other person's voting of Newco stock; and no officer or director of Newco, who concurrently holds or has under his or her direction or control more than one percent of the outstanding common

stock of Valspar shall, in his or her personal capacity as a shareholder of Valspar or otherwise, vote any stock of Valspar which he or she shall hold or which shall be held under his or her direction or control, nor shall any officer, director or employee of Newco influence, in his or her personal capacity as a shareholder of Valspar or otherwise, or attempt to control, supervise or influence, directly or indirectly, any other person's voting of Valspar stock;

11. Neither Valspar nor any officer, director or employee of Valspar, in his or her personal capacity as a shareholder of Newco or otherwise, shall participate in any decision by Newco, at shareholders' meetings or otherwise, relating to Newco's production, capacity, development, marketing, pricing or sale of Coating Resins, nor exercise, or attempt to exercise, in any way, directly or indirectly, any control, supervision or influence over any policy, decision or action regarding any aspect of Newco's production, capacity, development, marketing, pricing or sale of Coating Resins, other than through the policies, decisions, and actions of Valspar relating to the purchase, in the ordinary course of business, by Valspar of products from Newco for use in Valspar coatings; and neither Newco nor any officer, director or employee of Newco, in his or her personal capacity as a shareholder of Valspar or otherwise, shall participate in any decision by Valspar, at shareholders' meetings or otherwise, relating to Valspar's production, capacity, development, marketing, pricing or sale of Coating Resins, nor exercise, or attempt to exercise, in any way, directly or indirectly, any control, supervision or influence over any policy, decision or action regarding any aspect of Valspar's production, capacity, development, marketing, pricing or sale of Coating Resins, other than through the policies, decisions, and actions of Newco relating to the sale, in the ordinary course of business, by Newco of products to Valspar for use in Valspar coatings; provided however that nothing in this Section 11 shall prohibit Valspar and Newco from participating in a buying cooperative or other group formed to purchase raw materials, so long as the formation and practices of such group or cooperative comply with the antitrust laws and any other statutes enforced by the Commission.

12. Neither Valspar nor any officer, director or employee of Valspar, in his or her personal capacity as a shareholder of Newco or otherwise, shall take any action to obtain or

attempt to obtain, directly or indirectly, from Newco, any competitively sensitive information regarding Newco, and Newco shall not provide any such competitively sensitive information to Valspar, except as necessary to the purchase, in the ordinary course of business, by Valspar of products from Newco for use in Valspar coatings; and neither Newco nor any officer, director or employee of Newco, in his or her personal capacity as a shareholder of Valspar or otherwise, shall take any action to obtain or attempt to obtain, directly or indirectly, from Valspar, any competitively sensitive information regarding Valspar, and Valspar shall not provide any such competitively sensitive information to Newco, except as necessary to the purchase, in the ordinary course of business, by Valspar of products from Newco for use in Valspar coatings;

(F) Valspar shall take such action as is necessary to maintain the Viability and Competitiveness and the marketability of the Properties to Be Divested and of the Valspar Retained Properties and shall not cause or permit the destruction, removal or impairment of the Properties to Be Divested or of the Valspar Retained Properties except (1) in the ordinary course of business and (2) for ordinary wear and tear.

### III

*It is further ordered* That, as part of the divestiture of the Properties to Be Divested pursuant to Paragraph II, above: (1) Newco shall provide to Valspar a worldwide paid-up, non-royalty bearing, perpetual and non-exclusive license, without the right to sub-license to third-parties, to use the Cargill Technology to make, use and sell any product; and (2) Valspar shall provide to Newco a worldwide, paid-up, non-royalty bearing, perpetual and non-exclusive license, without the right to sub-license to third-parties, to use the McWhorter Technology to make, use and sell any product.

### IV

*It is further ordered* That:

(A) If Valspar and McWhorter have not divested, absolutely and in good faith and with the Commission's approval, the Properties to Be Divested within twelve (12) months of the date this Order becomes final, Valspar, McWhorter and Newco shall consent to the appointment by the Commission of a trustee to divest the Acquired Assets, along with any additional assets and other arrangements that may be necessary to assure the Viability and Competitiveness of the Acquired Assets and of the Valspar Retained Properties.

In the event the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Valspar, McWhorter and Newco shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Valspar, McWhorter or Newco to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph IV. (A) of this Order, Valspar, McWhorter and Newco shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Valspar, McWhorter and Newco, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Acquired Assets, along with any additional assets and businesses and other arrangements that may be necessary to assure the Viability and Competitiveness of the Acquired Assets and the Viability and Competitiveness of the Valspar Retained Properties.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission. Provided, however, the Commission may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Acquired Assets, or any other relevant information, as the trustee may reasonably request. Valspar, McWhorter and Newco shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Valspar, McWhorter and Newco shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in

divestiture caused by Valspar, McWhorter or Newco shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Valspar and McWhorter's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II. (C) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture of the Acquired Assets. The divestiture shall be made to an acquirer(s), and in a manner, that receives the prior approval of the Commission, provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Valspar from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Valspar, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Valspar, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Valspar and McWhorter and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Acquired Assets.

7. Valspar, McWhorter and Newco shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Valspar, McWhorter and Newco shall execute a trust agreement that transfers to the trustee all rights and powers necessary

to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV. (A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Acquired Assets.

12. The trustee shall report in writing to Valspar, McWhorter and Newco and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

*It is further ordered* That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Valspar, McWhorter and Newco have accomplished the divestitures required by Paragraph II of this Order, Valspar, McWhorter and Newco shall each submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying and have complied with those provisions, including the Agreement to Hold Separate. Valspar, McWhorter and Newco shall each include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of the Properties to Be Divested as specified in Paragraphs II and III of this Order, including the identity of all parties contacted. Valspar, McWhorter and Newco also shall each include in their compliance reports, among other things, copies of all written communications to and from such parties, all internal memoranda, reports and recommendations concerning divestiture.

VI

*It is further ordered* That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, McWhorter and Newco, respectively, shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise:

(A) Assets used by the seller since January 1, 1990, to manufacture Coating Resins and located in the United States, including its territories and possessions,

other than the acquisition of used machinery or equipment from brokers for such machinery or equipment, by means of normal transactions customary in the used equipment market, for which the value, in any given year, shall not exceed five hundred thousand (500,000) dollars; or

(B) All or any part of the stock or share capital of, or any other interest in, any entity that owns or operates assets located in the United States, including its territories and possessions, engaged in the production of Coating Resins.

#### VII

*It is further ordered* That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, Valspar shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, all or any part of the stock, share capital or assets of, or any interest in, Newco or any of the Properties to Be Divested, other than the acquisition of used machinery or equipment from brokers for such machinery or equipment, by means of normal transactions customary in the used equipment market, for which the value, in any given year, shall not exceed five hundred thousand (500,000) dollars.

#### VIII

*It is further ordered* That, one year from the date this Order becomes final and annually for nine years thereafter, Valspar, McWhorter and Newco (if Newco is distinct from McWhorter) shall each file with the Commission a verified written report of their compliance with this Order. Valspar, McWhorter and Newco shall each maintain and include in such compliance reports a copy of all written correspondence between Valspar and Newco and a detailed description of all other communications or meetings between Valspar and Newco, other than correspondence, communications or meetings relating solely to technical issues of resin performance in Valspar coatings and to matters relating to the purchase and sale of Coating Resins between Valspar and Newco in the ordinary course of business.

#### IX

*It is further ordered* That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Valspar, McWhorter or Newco made to their respective principal office, Valspar, McWhorter and Newco shall

permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Valspar, McWhorter or Newco relating to any matters contained in this Order; and

(B) Upon ten (10) days notice to Valspar, McWhorter or Newco and without restraint or interference from Valspar, McWhorter, or Newco to interview officers or employees of Valspar, McWhorter or Newco, who as applicable, may have counsel present, regarding such matters.

#### X

*It is further ordered* That Valspar, McWhorter and Newco shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries, or any other change that may affect compliance obligations arising out of the Order.

#### XI

*It is further ordered* That, for a period commencing on the date this Order becomes final and continuing for a period ending ten (10) years after the completion of the divestitures required by Paragraph II of this Order, Valspar, McWhorter and Newco shall be bound by the terms of this Order and shall comply with the obligations imposed herein. Thereafter this Order shall have no further force or effect.

#### Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among The Valspar Corporation, a corporation organized and existing under the laws of Delaware, with its principal office and place of business located at 1101 Third Street South, Minneapolis, Minnesota, 55415, its wholly-owned subsidiary, McWhorter, Inc. (collectively "Valspar"), a corporation organized and existing under the laws of California, with its principal office and place of business located at 400 East Cottage Place, Carpentersville, Illinois, 60110 and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

#### Premises

*Whereas*, on May 19, 1993, Valspar entered into an Asset Purchase Agreement providing for the acquisition (hereinafter the "Acquisition") of certain properties, businesses and other assets (hereinafter "the Acquired Assets") of Cargill, Incorporated ("Cargill"); and

*Whereas*, Valspar and Cargill each manufacture and sell Coating Resins; and

*Whereas*, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

*Whereas*, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission will place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

*Whereas*, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Acquired Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

*Whereas*, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I of the Consent Order and the Commission's right to seek a viable competitor to Valspar and to the properties to Be Divested; and

*Whereas*, the purpose of this Agreement and the Consent Order is to:

(i) Preserve the Acquired Assets as a viable business, independent of Valspar, pending final acceptance or withdrawal of acceptance of the Consent Order by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules,

(ii) Preserve the Properties to Be Divested as a viable business, independent of Valspar, engaged in the manufacture and sale of Coating Resins pending the divestiture of the Properties to Be Divested as viable and ongoing enterprises, and

(iii) Remedy anticompetitive effects of the Acquisition in the Coating Resins market; and

*Whereas*, Valspar entering into this Agreement shall in no way be construed

as an admission by Valspar that the Acquisition is illegal; and

Whereas, Valspar understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has determined that it has reason to believe the Acquisition may substantially lessen competition in the market for Coating Resins, and in recognition that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestitures are not accomplished, to seek divestiture of the Properties to Be Divested, and other relief, as follows:

1. Valspar agrees to execute and be bound by the attached Consent Order. Terms capitalized herein shall have the same definitions as terms capitalized in the Consent Order.

2. Valspar agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph 3 of this Agreement with respect to the Acquired Assets:

a. ten days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the divestiture required by the Consent Order has been completed.

3. Valspar will hold the Acquired Assets as they are presently constituted (hereafter the "Held-Separate Assets") separate and apart on the following terms and conditions:

a. Valspar may elect at any time after this Order becomes final to establish as Held Separate Assets the Properties to be Divested, in lieu of the Acquired Assets. At such time, the provisions of this paragraph 3 shall apply to the Properties to be Divested.

b. The Held-Separate Assets shall be held separate and apart and shall be operated independently of Valspar (meaning here and hereinafter, Valspar excluding the Held-Separate Assets and excluding all personnel connected with the Held-Separate Assets as of the date this Agreement was signed) except to the extent that Valspar must exercise direction and control over the Held-Separate Assets to assure compliance with this Agreement or with the Consent Order.

c. Valspar shall not exercise direction or control over, or influence directly or indirectly, the Held-Separate Assets; provided, however, that Valspar may exercise only such direction and control over the Held-Separate Assets as is necessary to assure compliance with this Agreement or with the Consent Order.

d. Valspar shall not cause or permit any destruction, removal, wasting, deterioration or impairment of the Held-Separate Assets, except for ordinary wear and tear. Valspar shall also maintain the viability and marketability of the Held-Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

e. Except for the single Valspar director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3.j), Valspar shall not permit any director, officer, employee, or agent of Valspar also to be a director, officer or employee of the Held-Separate Assets. In the event any members of the existing management of the Held-Separate Assets should choose not to accept employment with Newco, or retire or otherwise leave their management positions, the non-Valspar (as Valspar is defined in subparagraph 3.b hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.j hereof) shall have the power to replace such members of management.

f. Except as required by law or as reported by the auditor (provided for in subparagraph 3.g) and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, action to assure compliance with this Agreement or the Consent Order (including accomplishing the technology licensing required by Paragraph III of the Order, and the divestitures), or negotiating agreements to dispose of assets, Valspar shall not receive or have access to, or the use of, any "material confidential information" of the Held-Separate Assets, as applicable, not in the public domain, except as such information would be available to Valspar in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known

to Valspar from sources other than Cargill or the Held-Separate Assets, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

g. Valspar may retain an independent auditor to monitor the operation of the Held-Separate Assets. Said auditor may report to Valspar on all aspects of the operation of the Held-Separate Assets other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

h. Valspar shall not change the composition of the management of the Held-Separate Assets except that the non-Valspar (as Valspar is defined in subparagraph 3.b hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.j hereof) shall have the power to remove any employee for cause. Provided, however, that at such time as Valspar elects to establish as Held-Separate Assets the Properties to Be Divested, in lieu of the Acquired Assets, Valspar may separate permanently from Valspar and transfer to the Held-Separate Assets such McWhorter management and other McWhorter personnel as Valspar may elect.

i. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.b through 3.h hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 3.j hereof).

j. Valspar shall either: (1) Separately incorporate the Held-Separate Assets and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or (2) establish a separate business venture with articles of agreement covering the conduct of the Held-Separate Assets, in accordance with this Agreement. Valspar shall elect a new board of directors of the Held-Separate Assets ("New Board") or Management Committee of the Held-Separate Assets ("Management Committee") once it obtains title to the Held-Separate Assets. Valspar may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall consist of at least two non-Valspar directors, officers, or employees and no more than one Valspar director, officer, employee, or agent, provided, however, that such Valspar director, officer, employee, or

agent shall enter into a confidentiality agreement in accordance with the provision of Paragraph 3.1 hereof and shall not be a person involved in Valspar's Coating Resins business. Such director or Management Committee member who is also a Valspar director, officer, employee, or agent shall participate in matters that come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding \$500,000 and carrying out Valspar's and the Held-Separate Assets' responsibilities under this Agreement or under the Consent Order. Except as permitted by this Agreement, such Director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if Valspar and the Held-Separate Assets were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

k. Any current office or employee of Valspar may confer with the New Board or the Management Committee of the Held-Separate Assets, for the purposes of establishing or organizing the administrative functions within the Properties to Be Divested in order to comply with the terms of the Consent Order, but shall not be provided access to any material confidential information of the Held-Separate Assets.

l. Any Valspar director, officer, employee, or agent who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

m. All earnings and profits of the Held-Separate Assets shall be retained separately in the Held-Separate Assets. If necessary, Valspar shall provide the Held-Separate Assets with sufficient working capital to operate at current rates of operation.

n. Should the Federal Trade Commission seek in any proceeding to compel Valspar (meaning here and hereinafter Valspar including the Held-Separate Assets) to divest itself of the Acquired Assets or to compel Valspar to divest any assets or businesses of the Acquired Assets that it may hold, or to seek any other injunctive or equitable relief, Valspar shall not raise any

objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Valspar also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Valspar made to its principal office, Valspar shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Valspar and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Valspar or the Held-Separate Assets relating to compliance with this Agreement;

b. Upon ten (10) days notice to Valspar, and without restraint or interference from it, to interview officers or employees of Valspar or the Held-Separate Assets, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

#### **Analysis To Aid Public Comment on the Provisionally Accepted Consent Order**

The Federal Trade Commission ("the Commission") has accepted, for public comment, from The Valspar Corporation ("Valspar") and McWhorter, Inc. ("McWhorter"), an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by Valspar, through its wholly-owned subsidiary McWhorter, of the coating resins assets and businesses of Cargill, Incorporated ("Cargill"). Valspar, through McWhorter, and Cargill each produce and market various types of coating resins, including alkyd coating resins, modified alkyd coating resins, oil-modified urethane coating resins and saturated polyester coating resins, in the United States. These resins are used in the manufacture of paints and coatings for architectural,

industrial, and special purpose applications.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the production and sale of coating resins in the United States. The Commission has reason to believe that the acquisition would have anticompetitive effects and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of certain coating resins assets and businesses. The order would require Valspar to divest all the assets and businesses that it proposes to acquire from Cargill, as well as three of its own, current, coating resins producing facilities: Carpentersville, Illinois; Portland, Oregon; and Philadelphia, Pennsylvania. Valspar would retain five of its current resin producing plants.

The order requires Valspar to effect the divestiture by causing to be formed, in a manner that receives the prior approval of the Commission, an independent corporation ("Newco"), and transferring to Newco the assets and businesses to be divested. Under the terms of the order, Valspar may complete the divestiture by distributing to its shareholders the shares of the new company, which would be publicly traded. The purpose of the divestiture is to ensure continuation of both companies as ongoing, viable businesses engaged, in competition with each other and with other companies, in the manufacture and sale of coating resins and to remedy any lessening of competition in the coating resins market resulting from the acquisition.

The assets and businesses to be divested include plants, equipment, customer lists, patents and trademarks, trade secrets, and other technology and know-how.

The proposed consent also contains provisions requiring Valspar to provide the new company a non-exclusive license to use McWhorter's coating resin technology, including patents, formulations and know-how, and requiring the new company to provide Valspar a non-exclusive license to use the technology to be acquired from Cargill. The licenses exclude information that is protected from disclosure by contracts between Cargill or McWhorter and any coating producer. The purpose of the license provisions is to provide both entities



with a broad base of technology with which to compete in the marketplace while protecting from disclosure trade secrets of their respective customers.

The order prohibits interlocks and exercise of influence between the respective directors, officers, or employees of Valspar and Newco, limits the portion of the stock of each of the companies that may be owned by officers or directors of the other company, and prohibits any such officers or directors owning more than one percent of the company's stock from voting the stock.

Under the terms of the order, Valspar must complete the required divestitures within twelve months of the date the order becomes final. If Valspar fails to complete the required divestitures within the twelve-month period, the Commission may appoint a trustee to divest the Cargill assets and businesses acquired by Valspar together with any additional assets and businesses necessary to assure that the divested assets are viable and competitive in the coating resins market. Any proposed divestiture pursuant to the order must be approved by the Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. The hold separate agreement executed as part of the consent requires Valspar, until such time as the proposed order is made final, to hold separate and preserve all of the assets and businesses acquired from Cargill, and from that point until all of the required divestitures have been effected either by Valspar or by the trustee.

For a period of ten years from its effective date, the order would also prohibit McWhorter and Newco from acquiring, without prior Commission approval, stock or assets of, or interest in, any company engaged in the manufacture of coating resins.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,  
Secretary.

**Dissenting Statement of Commissioner Deborah K. Owen on Proposed Consent Agreement With Valspar Corporation (File No. 931-0098)**

In order to accept a consent agreement for public comment, the Commission must necessarily find that there is reason to believe that the law has been violated and that accepting the agreement would be in the public

interest. Because I do not find reason to believe that the law has been violated, I dissent from the Commission's action today.<sup>1</sup>

My decision here is based on many of the same considerations that led me to partially dissent in the *Occidental* case.<sup>2</sup> As I view the available evidence, and calculate the Herfindahl-Hirschman Index, the proposed acquisition by Valspar Corporation of Cargill, Inc.'s Resin Products Division would increase concentration in a moderately concentrated market by an amount that would potentially raise competitive concerns under the *Merger Guidelines*.<sup>3</sup> Based on my reading of § 1.51 of the *Guidelines* and the Commission's opinion in *B.F. Goodrich Co.*, 110 F.T.C. 207 (1988), the amount of evidence needed to overcome these concerns is not immense,<sup>4</sup> and there is abundant evidence here that anticompetitive effects are unlikely.<sup>5</sup> Specifically, the large number of competitors, and the heterogeneity of many of the products, would militate against the success of any attempted collusive scheme. Moreover, there is compelling evidence that customers can, and do, switch suppliers in response to a 5% price increase, including switching to many non-Cargill suppliers.

In the light of this evidence, I cannot find reason to believe that the originally proposed combination would result in a violation of the law, and I must dissent from issuing the proposed consent agreement for public comment.

[FR Doc. 93-27552 Filed 11-8-93; 8:45 am]

BILLING CODE 6750-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 93M-0383]

**CarboMedics, Inc.; Premarket Approval of CarboMedics® Prosthetic Heart Valve**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by CarboMedics®, Inc., Austin, TX, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of CarboMedics® Prosthetic Heart Valve. After reviewing the recommendation of the Circulatory System Device Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1993, of the approval of the application. In addition, the CarboMedics® Prosthetic Heart Valve requires tracking under section 519(e) of the act as amended by the Safe Medical Devices Act of 1990 (SMDA).

**DATES:** Petitions for administrative review by December 9, 1993.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Diane MacCulloch, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-1200.

**SUPPLEMENTARY INFORMATION:** On November 1, 1991, CarboMedics, Inc., Austin, TX 78752, submitted to CDRH an application for premarket approval of CarboMedics® Prosthetic Heart Valve. The device is a mechanical heart valve and is indicated as a replacement for human cardiac valves damaged by acquired or congenital disease or as a replacement for a previously implanted prosthesis.

On April 13, 1993, the Circulatory System Device Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 29, 1993, CDRH approved the application by a letter to the applicant from the Acting

<sup>1</sup> Because of my decision on the underlying case, I do not need to reach any issues that might be presented by the proposed remedies.

<sup>2</sup> Statement of Comm. Deborah K. Owen, Concurring in Part, and Dissenting in Part, *Occidental Petroleum Corporation*, Dkt. No. 9205, slip. op. (Dec. 22, 1982), appeal pending, No. 93-4122 (Second Circuit, June 2, 1993).

<sup>3</sup> U.S. Department of Justice & Federal Trade Commission Horizontal Merger Guidelines, § 1.51, reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,104.

<sup>4</sup> *Occidental Petroleum*, supra note 2, slip op. at 8.

<sup>5</sup> This obviates any need to consider entry or possible defenses to an otherwise anticompetitive combination.

Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document. Under Section 519(e) of the act as amended by the SMDA, manufacturers of certain types of devices are required to adopt a method of tracking that follows the devices through the distribution chain and then identifies and follows the patients who receive them. FDA has identified the above device as a permanently implantable device requiring tracking.

#### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 9, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act

(secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 29, 1993.

Joseph A. Levitt,  
Deputy Director for Regulations Policy, Center  
for Devices and Radiological Health.  
[FR Doc. 93-27511 Filed 11-8-93; 8:45 am]  
BILLING CODE 4160-01-F

#### [Docket No. 93N-0394]

#### Public Workshop on Validation of Blood Establishment Computer Systems; Availability of Draft Guideline; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a forthcoming 2-day public workshop on validation of blood establishment computer systems and is making available a "Draft Guideline for the Validation of Blood Establishment Computer Systems." FDA is requesting written comments on computer validation issues that should be considered for discussion at the workshop, and for inclusion in any final guidance document that may be developed.

**DATES:** The public workshop will be held on December 6 and 7, 1993, from 8:30 a.m. to 5:30 p.m. Registration is requested by November 22, 1993. Comments to be considered for discussion at the workshop and for inclusion in any final guidance document should be submitted by November 22, 1993. Written comments on the subjects discussed at the workshop should be submitted by January 5, 1994.

**ADDRESSES:** The public workshop will be held at the Renaissance Hotel/Washington-Dulles, 13869 Park Center Rd., Herndon, VA 22071. Interested persons may register for the workshop with April C. Wells, KRA Corp., 1010 Wayne Ave., suite 950, Silver Spring, MD 20910, 301-495-1591 (FAX 301-495-2919). For those not attending the workshop, single copies of the "Draft Guideline for the Validation of Blood Establishment Computer Systems" are available for comment by submitting a written request to the Congressional and Consumer Affairs Branch (HFM-12), Food and Drug Administration, 1401 Rockville Pike, suite 200 North, Rockville, MD 20852-1448, 301-594-

2000. Send two self-addressed adhesive labels to assist that office in processing your requests. Persons with access to INTERNET may request this document from

"CBER\_INFO@A1.CBER.FDA.GOV."

The document may also be obtained by calling the CBER VAX Information System at 301-594-1939 from a FAX machine with a touch tone phone attached or built in. Submit written comments on the "Draft Guideline for the Validation of Blood Establishment Computer Systems" to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this notice. The draft guideline and comments received are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Paula McKeever, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The application of computer technology in the manufacture of blood and blood products is rapidly increasing. Computer systems are being used as tools to manage the data necessary for critical steps in manufacturing including, among other things, donor suitability determinations, labeling, and acceptability of products for release and distribution.

Because of the rapid growth in the use of computer systems for blood and blood product manufacturing, FDA has recognized a need to provide guidance to blood establishments concerning their responsibilities for validation of these computer systems. Therefore, FDA has scheduled a public workshop for the purpose of exchanging information and comments among representatives of FDA, blood establishments, blood bank software developers and vendors, and other interested parties. Objectives of this workshop are the following: (1) To provide an opportunity for discussion and public comment on the "Draft Guideline for the Validation of Blood Establishment Computer Systems;" (2) to clarify FDA's expectations concerning validation of computer systems used in the manufacture of blood and blood products; (3) to identify the roles of users, developers, and vendors as they relate to the use of computer systems in

the manufacture of blood and blood products; (4) to promote an understanding of validation, qualification, and documentation of computer systems as they relate to quality assurance programs.

## II. Draft Guidance

The document "Draft Guideline for the Validation of Blood Establishment Computer Systems" was developed by a task force composed of FDA staff from the Center for Biologics Evaluation and Research (CBER), the Center for Drug Evaluation and Research (CDER), the Center for Devices and Radiological Health (CDRH), and the Office of Regulatory Affairs (ORA). It is designed to define the user's responsibilities and identify the need for active interaction between the users and the vendors/developers of blood bank computer systems. The draft includes discussion of the following: Computerized system definition; system validation protocols; computerized system testing; change control and audit trail records; manuals; maintenance; security; training, supervision, and proficiency testing; audits; and reporting to CBER.

Copies of the draft guideline will be sent in advance to registrants of the workshop if they register on or before November 22, 1993. Copies will also be available at the workshop. A copy of the draft guideline will be placed on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice as soon as that document is available.

FDA is making this draft guideline available for public comment and will consider such comments in any final guidance document developed. The agency also specifically invites comments on whether some or all of the principles discussed in the draft guideline should be codified by rulemaking.

Because FDA is in the process of revising 21 CFR 10.90(b), FDA does not intend to issue this document under the authority of 21 CFR 10.90(b) and the document, although called a guideline, would not bind the agency and would not create any rights, privileges, or benefits on or for any person. Manufacturers of blood and blood components could choose to use alternative procedures not provided in the guideline. Manufacturers of blood and blood components may wish to discuss the alternative procedures with FDA.

## III. Request for Comments

FDA is requesting written comments on topics to be considered for (1)

discussion in the workshop and (2) inclusion in any final guidance document on validation of blood establishment computer systems. FDA will consider the comments received in any final guidance document that is developed. Two copies of any comments should be submitted, except that individuals may submit one copy.

## IV. Authority

This notice is issued and published under § 10.65(b)(1) through (b)(3) (21 CFR 10.65(b)(1) through (b)(3)), which provides for open public meetings. Open public meetings may be held to discuss matters pending before FDA that are in the public interest. Any interested person may attend an open public meeting and may participate in the discussion, although interested persons are requested to register in advance to attend this meeting, as specified in the notice.

Dated: November 3, 1993.

**Michael R. Taylor,**  
Deputy Commissioner for Policy.  
[FR Doc. 93-27510 Filed 11-8-93; 8:45 am]  
BILLING CODE 4160-01-F

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Office of the Secretary, Interior.  
ACTION: Notice of meeting.

**SUMMARY:** The Department of the Interior announces a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on November 23, 1993, at 9 a.m., in the first floor conference room 645 "G" Street, Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, Suite 119, Anchorage, Alaska (907) 271-5011.

**SUPPLEMENTARY INFORMATION:** The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska*, Civil Action No. A91-081 CV. This meeting is rescheduled from November 9 and 10, 1993, and will include a discussion and development of recommendations on the Trustee Council's draft Restoration

Plan. Officers will be elected for the upcoming year.

Dated: November 5, 1993.

**Willie R. Taylor,**  
Deputy Director, Office of Environmental Affairs.  
[FR Doc. 93-27712 Filed 11-8-93; 8:45 am]  
BILLING CODE 4310-RC-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of October, 1993.

**Marvin M. Fooks,**  
Director, Office of Trade Adjustment Assistance.

## APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Brown Shoe Co/Pagoda Trading Co (Workers).	St. Louis, MO .....	10/25/93	10/12/93	29,151	Sell children's shoes.
Unisys Corp/Southern Region (Workers) ..	Houston, TX .....	10/25/93	08/11/93	29,152	Computer servicing.
Steingut Dress Co (Workers) .....	Dupont, PA .....	10/25/93	10/14/93	29,153	Ladies dresses.
Seagate Technology, Inc (Co) .....	Bloomington, MN ...	10/25/93	10/06/93	29,154	Hard disk drives.
Relloc Manufacturing Co (IUE) .....	Forrest City, AR ....	10/25/93	10/14/93	29,155	Mens' dress and casual slacks.
Lykes Bros. Steamship Co, Inc (Co) .....	New Orleans, LA ....	10/25/93	10/08/93	29,156	Container transportation.
Loranger Manufacturing Corp (Workers) ...	Warren, PA .....	10/25/93	10/13/93	29,157	Vehicle electrical parts.
Int'l Woodworkers of America (IWA) .....	Medford, OR .....	10/25/93	10/11/93	29,158	Sanded plywood.
Robert Bosch Fluid Power Corp (UAW) ....	Zanesville, OH .....	10/25/93	09/17/93	29,159	Hydraulic pumps.
Benteler Industries (Co) .....	Grand Rapids, MI ...	10/25/93	10/07/93	29,160	Vehicle exhaust headers.
Barbee, Inc (TSW) .....	Renton, WA .....	10/25/93	10/12/93	29,161	Softwood dimensional lumber.
Alaska Pulp Corp (Workers) .....	Sitka, AK .....	10/25/93	10/15/93	29,162	Wood pulp.
Allsteel, Inc (Workers) .....	Aurora, IL .....	10/25/93	10/11/93	29,163	Office furniture.
General Elec./Specialty Component (IUE)	Seattle, WA .....	10/25/93	10/12/93	29,164	Jet engine components.
American Precision Industries (Co) .....	East Aurora, NY ....	10/25/93	10/04/93	29,165	Inductors.
American Precision Industries (Co) .....	Arcade, NY .....	10/25/93	10/04/93	29,166	Inductors.

[FR Doc. 93-27541 Filed 11-8-93; 8:45 am]  
BILLING CODE 4510-30-M

[TA-W-28; 950, et al.]

**Colonial Corp. of America, Division of Taren Holdings, Inc.; Tracy City, Tennessee, TA-W-28,950; Woodbury, Tennessee, TA-W-28,965; and Manchester, Tennessee TA-W-28,965A; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 1993, applicable to all workers of the above mentioned locations of Colonial Corporation of America except Manchester, Tennessee.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The company had another location in Manchester, Tennessee which produced the same products as that produced at Woodbury. The findings show that Manchester sales, production and employment data were included in the original data submission. The Manchester plant closed in July, 1993.

Accordingly, the Department is amending the certification to include the Manchester, Tennessee workers of the Colonial Corporation of America.

The amended notice applicable to TA-W-28,950 and TA-W-28,965 is hereby issued as follows:

All workers of Colonial Corporation of America, Division of Taren Holdings in Tracy City, Tennessee (TA-W-28,950) producing men's shirts and ladies' blouses who became totally or partially separated from employment on or after August 16, 1992 and

in Woodbury, Tennessee (TA-W-28,965) who became totally or partially separated from employment on or after July 30, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and

All workers of Colonial Corporation of America, Division of Taren Holdings in Manchester, Tennessee (TA-W-28,965A) who became totally or partially separated from employment on or after July 30, 1992 and before November 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of November 1993.

**Marvin M. Fooks,**  
*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93-27539 Filed 11-8-93; 8:45 am]  
BILLING CODE 4510-30-M

[TA-W-27,987]

**Frost Dress Manufacturer, Frost, Texas, a/k/a Jerrell, Inc., Dallas, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Frost Dress Manufacturer, in Frost, Texas. The certification notice was issued on January 29, 1993.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Frost Dress Manufacturer were reported under a UI tax account for the parent company—Jerrell, Inc., in Dallas, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA-W-27,987 is hereby published as follows:

All workers of Frost Dress Manufacturer, Frost, Texas also known as (a/k/a) Jerrell, Inc., Dallas, Texas who were engaged in employment related to the production of ladies' blouses, skirts and pants and became totally or partially separated from employment on or after November 5, 1991 and before January 28, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this October 29, 1993.

**Marvin M. Fooks,**  
*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93-27542 Filed 11-8-93; 8:45 am]  
BILLING CODE 4510-30-M

**Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of October, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,049; *Dahlstrom Manufacturing Co., Inc., Jamestown, NY*

TA-W-28,527; *Armco, Inc., Empire Detroit Steel Div., Bowman Metal Deck, Heidelberg, PA*

TA-W-28,944; *Imperial Smelting Co., Chicago, IL*

TA-W-29,011; *Phoenix Dye Works, Cleveland, OH*

TA-W-28,918; *EEMCO, Los Angeles, CA*

TA-W-28,966; *Mundet Hermetite, Buena-Vista, VA*

TA-W-28,915; *Campbell Soup Co., Salisbury, MD*

TA-W-28,919; *Regal-Beloit Corp., Maxton, NC*

TA-W-28,954; *Dresser Industries, Inc., Security Div., Eunice, LA*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-29,043; *Litton Systems, Inc., Litton Guidance & Control Systems Div., Grants Pass, OR*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,001; *Dow Chemical Co., Midland, MI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,984; *Carole Hochman Designs, Inc., Mifflinburg, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,928; *Pentapco, Inc., Elizabeth, NJ*

Separations at Pentapco, Inc., Elizabeth, NJ were due to a corporation decision to consolidate operations and move all production to another domestic facility.

TA-W-29,107; *Advertising Processing, Inc., Amsterdam, NY*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,130; *Federal Deposit Insurance Corp., Oklahoma City, OK*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,955; *CTS Corp., Brownsville, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,885; *ABB Power T&D Co., Bloomington, IN*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,935; *BFM Energy Products, Santa Ana, CA*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,126; *Labor Contractors d/b/a/ Rocky Mountain Temporaries Inc., Troy, MI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,909; *Parker Hannifin Corp., Trumann, AR*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-28,982; *Abrasive Technology, Inc., Southbridge, MS*

U.S. imports of abrasives declined in the latest twelve months under investigation July 1992 through June 1993 as compared to the previous comparable 12 month period.

TA-W-28,907; *Anson Gas Corp., Oklahoma City, OK*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-28,880; *Elkay Mining Co., Mine #060, (Wade Eagle Mine), Lyburn, WV*

U.S. imports of coal are negligible.  
TA-W-29,077; *The Carter Mining Co., Gillette, WY*

Aggregate imports into the US like or directly competitive with coal manufactured at the Carter Mining, Gillette, WY were negligible in the relevant time period.

TA-W-28,821; *Lockheed Fort Worth Co., Machined Parts Production Sheet Metal Production, Manufacturing Resource Planners, Fort Worth, TX*

The investigation revealed that criterion (1) and criterion (3) have not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-28,995; *Crown Cork & Seal Co., Inc., Machinery Div Plant #17, Baltimore, MD*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,028; *Kaiser Aluminum & Chemical Corp., Trentwood Works, Spokane, WA*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,073; *Energy Data Services, Inc., Englewood, CO*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

#### Affirmative Determinations

TA-W-29,018; *Bocar Apparel Co., Inc., Tunkhannock, PA*

A certification was issued covering all workers separated on or after August 25, 1992.

TA-W-29,045; *Ithaca Colquitt, Colquitt, GA*

A certification was issued covering all workers separated on or after September 9, 1992.

TA-W-28,961; *Betten Manufacturing Co., Inc., Fayette, AL*

A certification was issued covering all workers separated on or after August 5, 1992.

TA-W-28,633; *Walbar Corp., Peabody, MA*

A certification was issued covering all workers separated on or after April 26, 1992.

TA-W-29,110 & TA-W-29,111; *Texasgulf, Inc., Newgulf, TX & Midland, TX*

A certification was issued covering all workers separated on or after September 27, 1992.

TA-W-28,930; *Kaiser Aluminum & Chemical Corp., Mead, WA*

A certification was issued covering all workers separated on or after July 26, 1992.

TA-W-29,005; *Zinc Corp of America, Bartlesville Div., Bartlesville, OK*

A certification was issued covering all workers separated on or after August 24, 1992.

TA-W-29,017; *City Auto Stamping, Toledo, OH*

A certification was issued covering all workers separated on or after August 24, 1992.

TA-W-28,770; *Mount Baker Plywood, Inc., Bellingham, WA*

A certification was issued covering all workers separated on or after May 28, 1992.

TA-W-28,957; *Dantan, Inc., Dumas, AR*

A certification was issued covering all workers separated on or after July 27, 1992.

TA-W-28,798; *Hermitage Hospital Products, Niantic, CT*

A certification was issued covering all workers separated on or after June 9, 1992.

TA-W-29,070; *Muelhens, Inc., Orange, CT*

A certification was issued covering all workers separated on or after September 8, 1992.

TA-W-29,029; *Keystone Fireworks Manufacturing Co., Inc., Dunbar, PA*

A certification was issued covering all workers separated on or after August 30, 1992.

TA-W-28,823; *KESU Systems & Service, Inc., Midland, TX*

A certification was issued covering all workers separated on or after May 1, 1992.

TA-W-28,992; *New London Oil, Inc., San Antonio, TX*

A certification was issued covering all workers separated on or after August 30, 1992.

TA-W-28,938; *PPG Industries, Inc., Greensburg, PA*

A certification was issued covering all workers separated on or after July 27, 1992.

TA-W-28,925; *Cooper Industries, Cameron Forged Products Div., Houston, TX*

A certification was issued covering all workers separated on or after July 22, 1992.

TA-W-28,962; *Kaiser Aluminum & Chemical Corp., Tacoma, WA*

A certification was issued covering all workers engaged in the production of primary, sows aluminum separated on or after August 6, 1992. Also, all workers engaged in the production of electric rod aluminum are denied eligibility to apply for trade adjustment assistance.

I hereby certify that the aforementioned determinations were issued during the month of October, 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 2, 1993.

**Marvin M. Fooks,**  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-27538 Filed 11-8-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,055, et al.]

**GRL Production Services, Inc., Denver, Colorado, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In the matter of GRL Production Services Inc.; TA-W-29,055, Denver, Colorado; TA-W-29,055A, All Locations in Texas, Except Houston (TA-W-28,701); TA-W-29,055B, Wyoming; TA-W-29,055C, California; TA-W-29,055D, Montana; TA-W-29,055E, North Dakota; TA-W-29,055F, New Mexico; TA-W-29,055G, Louisiana.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for

Worker Adjustment Assistance on September 28, 1993, applicable to all workers of GRL Production Services in the locations mentioned above except Louisiana. The notice was published in the **Federal Register** on October 21, 1993 (58 FR 54377).

At the request of the company, the Department reviewed its certification for the workers of GRL Production Services, Inc. The findings show several worker separations at GRL Production Services, Inc. in Louisiana.

Sales, production and employment declined at GRL Production Services in Louisiana during the relevant period. Accordingly, the Department is amending its certification to include the worker separations in Louisiana.

The amended notice applicable to TA-W-29,055 is hereby issued as follows:

All workers of GRL Production Services, Inc., Denver, Colorado (TA-W-29,055), and all locations in Texas except Houston (TA-W-28,701), and the below cited locations engaged in activities related to the drilling and production of crude oil and natural gas who became totally or partially separated from employment on or after September 8, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA-W-29,055B, Wyoming;  
TA-W-29,055C, California;  
TA-W-29,055D, Montana;  
TA-W-29,055E, North Dakota;  
TA-W-29,055F, New Mexico;  
TA-W-29,055G, Louisiana"

Signed in Washington, DC, this November 1, 1993.

**Marvin M. Fooks,**  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-27540 Filed 11-8-93; 8:45 am]

BILLING CODE 4510-30-M

**NATIONAL INDIAN GAMING COMMISSION**

**Fee Rates**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted a revised preliminary annual fee rate of .6% for calendar year 1992. This rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

**FOR FURTHER INFORMATION CONTACT:** Fred W. Stuckwisch, National Indian Gaming Commission, 1850 M Street, NW., suite 250, Washington, DC 20036;

telephone 202/632-7003; fax 202/632-7066 (these are not toll-free numbers).  
**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating class II gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The Commission is unable (at this time) to adopt a final fee rate for calendar year 1992 because all class II gaming operations regulated by the Commission have not reported their assessable gross revenues and paid their fees for 1992.

The regulations of the Commission and the revised rate being adopted today are effective for calendar year 1992. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due. The Commission computes the amounts of any credits that may be due and so advises the gaming operations.

**Anthony J. Hope,**  
*Chairman, National Indian Gaming Commission.*

[FR Doc. 93-27466 Filed 11-8-93; 8:45 am]

BILLING CODE 7565-01-M

## NATIONAL SCIENCE FOUNDATION

### Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

Dated: November 4, 1993.

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act 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:** Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On September 27, 1993 the National

Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for enter site of special interest, was issued to Wesley W. Weathers, on October 28, 1993.

**Thomas Forhan,**

*Permit Office, Office of Polar Programs.*

[FR Doc. 93-27543 Filed 11-8-93; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055-SP (Suspension Order) EA-86-155]

### Appointment of Adjudicatory Employee

In the Matter of Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio 44041.

Pursuant to 10 CFR 2.4 (1993), notice is hereby given that John M. Pelchat, who is employed in the Nuclear Regulatory Commission's Region II office in Atlanta, Georgia, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 in order to advise the Commission with respect to issues related to the pending appeal of LBP-90-17, 31 NRC 540 (1990). Mr. Pelchat has not been previously engaged in the performance of any investigative or litigating function in connection with this or any factually related proceeding.

Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees who perform investigative or litigating functions in this proceeding are required to observe the restrictions in 10 CFR 2.780 and 2.781 (1993) with respect to any communications with Mr. Pelchat.

It is so ordered.

Dated at Rockville, Maryland, this 3d day of November 1993.

For the Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 93-27502 Filed 11-8-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

### Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of amendments to Facility Operating License Nos. NPF-11 and NPF-18, issued to the Commonwealth Edison Company (the licensee), for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendments would add a total of eight valves in a new category to Table 3.6.3-1, "Primary Containment Isolation Valves," of the LaSalle Technical Specifications (TS). The new category will be "Reference Leg Backfill" and will consist of two containment isolation devices which are simple check valves, in each of four backfill lines added to the reference legs of the Reactor Vessel Level Instrumentation System (RVLIS). The subject reference legs are those which provide an input to the instruments which, in turn, provide actuation signals to various engineered safety features (ESF) including signals which would open the safety relief valves (SRV) on the main steamlines and signals which would initiate operation of various emergency core cooling systems (ECCS).

There are two other reference legs in the LaSalle RVLIS which provide indication only of the reactor vessel water level and do not provide actuation signals to the station's ESFs. These latter reference legs also will have backfill lines but do not, by design, require any additional containment isolation devices.

The addition of six backfill lines to each of the two units of LaSalle is in response to the NRC's request in NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Water Level Instrumentation in BWRs," dated May 28, 1993 (Bulletin). The Bulletin requested each affected licensee to implement hardware modifications necessary to ensure that the RVLIS design is of high functional reliability for long-term reliability. The purpose of these proposed hardware modifications is to provide a continuous supply of degassed water from the Control Rod Drive (CRD) system which will be injected into the six RVLIS reference lines, thereby eliminating a potential source of error in the indications of the reactor vessel water level. This indication error could occur either during a rapid depressurization event or during depressurization while undergoing a normal reactor cooldown as discussed in the Bulletin.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated the proposed Technical Specification Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station, Units 1 and 2 in accordance with the proposed amendment will not:

Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed change to Technical Specification Table 3.6.3-1 is administrative in nature. Adding components to Table 3.6.3-1 does not change the probability nor does it change the consequences of any previously evaluated accident for LaSalle County Station.

The proposed modifications for the reference leg backfill instrument lines do not increase the probability of any previously evaluated accidents for LaSalle County Station. For the indication only reference legs, the inadvertent closure of a root value does not significantly increase the consequence of any previously evaluated accident as a result of the proposed plant modifications.

The proposed plant modifications for the reference leg backfill check valves will not increase the radiological consequences of any previously evaluated accident. The radiological impact from a reference leg backfill instrument line break is bounded by LaSalle's Instrument Line Break analysis (UFSAR Section 15.6.2). Therefore, the proposed plant changes will not increase the consequences of any previously evaluated accident.

Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed modification connects the non-safety-related CRD system to each safety-related division of RPV instrumentation. The failure of the CRD piping may result in instrument line leakage. However, this event is mitigated by the isolation action of the reference leg backfill check valves. These check valves are classified as safety-related and will be maintained and controlled such

that overall plant safety is maintained. The addition of the reference leg backfill values to the Technical Specifications is administrative in nature and does not create the possibility of a new or different kind of accident for LaSalle Station.

Involve a significant reduction in the margin of safety because:

The proposed change to Technical Specification Table 3.6.3-1 to include the reference leg backfill valves is administrative in nature. Primary containment integrity is not compromised by the addition of a pair of check valves that provide isolation for the reference leg backfill lines. These valves have been demonstrated to meet the criteria specified in General Design Criteria (GDC) 55. The maintenance and control applied toward all the reference leg backfill check valves ensures that overall plant safety is maintained. It can therefore be concluded that the addition of the reference leg backfill valves to Technical Specification Table 3.6.3-1 does not reduce the margin of safety for LaSalle County Station.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to

room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 9, 1993, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been



admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any

hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to J. Dyer: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated October 29, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogleby, Illinois 61348.

Dated at Rockville, Maryland, this 3rd day of November 1993.

For the Nuclear Regulatory Commission.

**M. David Lynch,**

*Acting Project Manager, Project Directorate III-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93-27505 Filed 11-8-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254]

**Commonwealth Edison Co.;  
Consideration of Issuance of  
Amendment to Facility Operating  
License, Proposed No Significant  
Hazards Consideration Determination,  
and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-29, issued to the Commonwealth Edison Company (the licensee), for operation of the Quad Cities Nuclear Power Station, Unit 1, located in Rock Island County, Illinois.

The proposed amendment resolves unreviewed safety questions (USQ) related to proposed plant modifications associated with Reactor Vessel Water Level Instrumentation. These modifications have been initiated to mitigate the circumstances outlined in NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Water Level Instrumentation in BWRs" dated May 28, 1993 (Bulletin).

Exigent circumstances exist because the design of the backfill instrumentation to meet the requirements of the Bulletin was not completed on a schedule to ensure that the resolution of the USQ would allow time for the normal 30-day public comment period and still allow startup from the planned maintenance outage for Quad Cities, Unit 1, scheduled for completion before November 22, 1993.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for an amendment to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The addition of the backfill instrumentation piping does not significantly increase the probability of an accident previously evaluated due to the low probability of the inadvertent closure of the root valve(s). CECO has evaluated the estimated frequency of the inadvertent closure of the root valve(s) at approximately  $1E-08$  per reactor year given the implementation of administrative controls. The resulting condition (valve mismanipulation) cycles the Reactor Pressure Vessel in a similar manner as a plant LOCA (i.e., simulates LOCA conditions). The current (pre-modification) LOCA initiation frequency is predicted to be approximately  $1E-04$  per reactor year. Therefore, the proposed modifications do not significantly increase the probability of any previously evaluated accident.

The consequences of any previously evaluated accident are not increased by the proposed modifications. For example, the consequences of closing the root valve for the reference leg from condensing chamber 12A, without first isolating the backfill injection, is the inadvertent pressurization of the reference leg resulting in the opening of the SRV and all Electromagnetic reliefs. This is equivalent to an inadvertent actuation of the automatic depressurization system (ADS)—an event that is not analyzed in the safety analysis as an initiating event. Regardless, the event is bounded by the recirculation line break analysis in terms of the RPV response. Because this event would release inventory to the suppression pool, it has less significant consequence than other events previously analyzed for Dresden and Quad Cities Stations.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

For Dresden and Quad Cities Stations, a spectrum of Loss-of-Coolant Accidents have previously been evaluated. The accident in question associated with the proposed modifications can be categorized as a LOCA due to the resultant plant response following the initiating conditions. The previously analyzed LOCA analyses bound the conditions introduced by the proposed modifications. As such, the proposed amendment request for Dresden and Quad Cities Stations do not introduce any new or different kinds of accidents.

The proposed modification connects the non-safety-related CRD system to each division of RPV instrumentation. The failure of the CRD piping may result in instrument line leakage. However, this event is mitigated by the isolation action of the reference leg backfill instrument check valves. Although the proposed modifications may introduce the potential for a malfunction of equipment of a different type than previously evaluated in the safety analysis report, the proposed amendment request for Dresden and Quad Cities Stations does not introduce any new or different kinds of accidents.

(3) Involve a significant reduction in the margin of safety because:

The previously analyzed LOCA consequences bound the consequences

introduced by the inadvertent closure of the root valve(s) and subsequent LOCA conditions. As such, the previously approved safety margin remains unchanged. Therefore, the proposed modifications do not significantly reduce the margin of safety for both Dresden and Quad Cities Stations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 9, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner

shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-

5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to J. Dyer: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 29, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 3rd day of November 1993.

For the Nuclear Regulatory Commission,  
Chandu P. Patel,  
Project Manager, Project Directorate III-2,  
Division of Reactor Projects III/IV/V, Office  
of Nuclear Reactor Regulation.  
[FR Doc. 93-27506 Filed 11-8-93; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-245]

### Revocation of Exemption

In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 1)

I

Northeast Nuclear Energy Company (NNECO or the licensee) is the holder of Facility Operating License No. DPR-21, which authorizes the operation of the Millstone Nuclear Power Station, Unit 1, (the facility) at steady-state power levels not in excess of 2011 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in New London County, Connecticut. The license provides,

among other things, that it is subject to all rules, regulations and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations at 10 CFR Part 50, appendix J, paragraph III.D.2(b)(ii), requires that air locks which are opened during periods when containment integrity is not required by the Technical Specifications be tested at greater than or equal to  $P_a$  (maximum accident pressure or 43 psig) at the end of such periods. On May 10, 1985, the NRC granted three exemptions published in the Federal Register on May 17, 1985 (50 FR 20635). Specifically, the NRC granted exemptions concerning Type A testing of penetrations with expansion bellows, main steam isolation valve testing, and containment air lock testing. The third exemption, air lock testing at 10 psig, is an exemption to paragraph III.D.2(b)(ii) of 10 CFR Part 50, appendix J, which requires testing at  $P_a$  prior to entering a mode in which primary containment integrity is required. NNECO requested this exemption to allow the deferral of the full pressure test until after the last containment entry is made during startup.

By the licensee's letter dated July 27, 1993, the licensee requested that the exemption for containment air locks be revoked. Revocation of the exemption will require NNECO to test the containment air locks per the requirements of 10 CFR Part 50, appendix J, paragraph III.D.2(b)(ii).

III

Upon receipt of the May 10, 1985, appendix J exemption, the appropriate changes to operating and surveillance procedures and technical specifications were not implemented, resulting in the lack of procedural guidance necessary to adequately comply with the requirements of the appendix J exemption. This resulted in a Level IV violation in May 1991 for not performing a 10 psig local leak rate test of the drywell personnel air lock prior to operating the plant in a condition in which primary containment integrity was required.

In response to the violation, NNECO stated that future compliance with the requirements of 10 CFR Part 50, appendix J would be ensured by revising the applicable operations and surveillance procedures to test the air lock at 43 psig prior to entering a mode in which primary containment integrity is required if the air lock was opened during the period when primary

containment integrity was not required by technical specifications. NNECO has proposed to: (1) Replace TS Section 4.7.A.3.d(2) with wording consistent with paragraph III.D.2(b) of 10 CFR Part 50, appendix J, and (2) revise TS Bases Section 4.7.A to state that personnel air lock door seal testing is performed in accordance with 10 CFR Part 50, appendix J requirements. Therefore, based on the approval of the TS change and the future compliance with 10 CFR Part 50, appendix J, paragraph III.D.2(b) requirements, the licensee requested revocation for the exemption for containment air lock testing.

In the July 27, 1993, letter, NNECO proposed to eliminate the exemption concerning containment air lock testing and reword the description of the May 10, 1985, appendix J exemption, which is described in Millstone Unit 1 Operating License Section 2.D(2), to delete the reference to low pressure tests of the containment access air locks. In addition, NNECO proposed to: (1) Replace Technical Specification Section 4.7.A.3.d(2) with wording consistent with paragraph III.D.2(b) of 10 CFR Part 50, appendix J, and (2) revise the Technical Specification Bases Section 4.7.A to state that personnel air lock door seal testing is performed in accordance with 10 CFR Part 50, appendix J requirements.

The NRC staff has reviewed the information submitted by the licensee and concludes that the basis upon which the exemption for the containment air locks was granted is no longer needed in that the licensee will test the containment air locks per the requirements of 10 CFR 50, appendix J, paragraph III.D.2(b)(ii).

#### IV

Accordingly, the Commission has determined that the specific exemption from 10 CFR Part 50, appendix J, granted on May 10, 1985, for air lock testing is hereby revoked in that it is no longer needed.

This revocation of exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 1st day of November 1993.

Steven A. Varga,

Director, Division of Reactor Projects—I/II,  
Office of Nuclear Reactor Regulation.

[FR Doc. 93-27507 Filed 11-8-93; 8:45 am]

BILLING CODE 7590-01-M

#### OFFICE OF PERSONNEL MANAGEMENT

##### Notice of Request for Clearance of Revised Forms RI 20-7 and RI 30-3

AGENCY: Office of Personnel Management.

ACTION: Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 20-7, Representative Payee Application, is used by CSRS and FERS to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30-3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Approximately 12,480 RI 20-7 forms will be completed per year. The form requires approximately 30 minutes to complete. The annual burden is 6,240 hours. Approximately 250 RI 30-3 forms will be completed per year. The form requires approximately 1 hour to complete. The total annual burden is 6,490 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

**DATES:** Comments on this proposal should be received on or before December 9, 1993.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Chief, Forms Analysis & Design Section, (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93-27383 Filed 11-8-93; 8:45 am]

BILLING CODE 6325-01-M

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

##### Implementation of the Accelerated Tariff Elimination Provision of the United States-Canada Free-Trade Agreement

AGENCY: Office of the United States Trade Representative.

**ACTION:** Notice of and request for comments on articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

**SUMMARY:** Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

**DATES:** Public comments are due by December 1, 1993.

**ADDITIONAL INFORMATION:** An exchange of letters between the Governments of the United States and Canada on June 30, 1993, concluded the third round of consultations on accelerated duty removal under the U.S.-Canada Free-Trade Agreement (FTA), and the results of those consultations were implemented with respect to U.S. import duties by a proclamation signed by the President on July 4, 1993, and published in the *Federal Register* of July 8, 1993, volume 58, Number 129, at page 36839 through 36852.

In the course of the consultations, technical problems were encountered on a limited number of products that precluded further action on those products. For example, it was ascertained that certain products that were the subject of petitions for accelerated duty removal were incorrectly or inaccurately described or were not classified in the tariff subheading presumed by the petitioner and listed in the public notice of the consultations. The Governments of the United States and Canada agreed that such products would be set aside pending correction of the technical problems and proper public notice, after which the consultations would proceed on those products. The products involved are the subject of this notice.

The notice also includes metallized balloons. In the second round of

accelerated duty removal, the United States and Canada removed the duty on "mylar" balloons. It has since been determined that the balloons under consideration and intended to be covered by that action actually are made of metallized polyester or nylon rather than polyethylene terephthalate (mylar).

Inquiries regarding this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to Mr. P. Claude Burcky, Office of North American Affairs, Office of the United States Trade Representative, room 501, 600 17th Street, NW., Washington, DC 20506, Telephone (202) 395-3412.

Further information on accelerated tariff elimination under the FTA may be found in the Federal Register notice of November 15, 1991, Volume 56, Number 221, at page 58117 through 58119.

#### Articles That Will Be Considered in Negotiations

The specified goods in the following subheadings of the Harmonized Tariff Schedule of the United States will be subject to negotiations with Canada for accelerated duty elimination:

1005.90.40 Popping corn prepared and packaged for use in microwave ovens

6002.43.00 Knitted fabric, 24 gauge, composed of high strength, non melting, aromatic polyamide staple yarn, produced on simplex apparatus, certified by the importer as intended for use in the manufacture of high temperature resistant gloves

8538.90.00 Parts for protectors of subheading 8536.20.00, certified by the importer as intended for use in electric motors

9031.80.00 Checking gauges (crimp calipers) Hall-effect electromagnetic position sensors

9503.90.50 Metallized balloons

The specified goods in the following tariff item numbers of the Canadian Customs Tariff Schedule will be subject to negotiations with Canada for accelerated duty elimination:

6002.43.90 Knitted fabric, 24 gauge, composed of high strength, nonmelting, aromatic polyamide staple yarn, produced on simplex apparatus, for use in the manufacture of high temperature resistant gloves

8512.90.00 Parts of side beams for motorcycles

8538.90.90 Parts for protectors of tariff item number 8536.20.00, for use in the manufacture of electric motors

9030.90.10 Hall-effect electromagnetic position sensors

9031.80.20 Checking gauges (crimp calipers)

9503.90.00 Metallized plastic balloons

#### Requests for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles listed above will be accepted until December 1, 1993, if submitted in accordance with 15 CFR part 2003. Comments should be typewritten and submitted in ten copies to P. Claude Burcky, Office of North American Affairs, Office of the United States Trade Representatives, room 501, 600 17th Street, NW., Washington, DC 20506. All submissions must specify: (1) The United States and/or Canadian subheading to which the comments refer, (2) the name, address, and telephone number of the person, firm, or organization making the comments, and (3) an indication as to whether the writer represents a:

- Producer in the United States
- Importer in the United States
- Exporter in the United States
- Consumer in the United States
- Other, in the United States (please specify)
- Producer in Canada
- Importer in Canada
- Exporter in Canada
- Consumer in Canada
- Other, in Canada (please specify)

#### Advice of the United States International Trade Commission

The United States International Trade Commission is being furnished with the above list of articles for the purpose of securing from the Commission its judgement as to the probable economic effect of accelerated elimination of United States duties on industries producing like/or directly competitive articles and on consumers.

#### Advice of the Private Sector Advisory Committees

Pursuant to section 103(a)(1) of the FTA Implementation Act, private sector advisory committees are being furnished with the above list of articles for the purpose of securing their advice.

David A. Weiss,

Deputy Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 93-27564 Filed 11-8-93; 8:45 am]

BILLING CODE 3190-01-M

#### POSTAL RATE COMMISSION

##### Commission Visit

November 3, 1993.

Notice is hereby given that members of the Commission and certain advisory staff will visit the following mail processing facilities of the U.S. Postal Service.

Bulk Mail Center, Capitol Heights, MD, November 15, 1993. Local Carrier Station, Burke, VA, November 18, 1993. General Mail Facility, Merrifield, VA, November 18, 1993.

Members of the Commission and certain advisory staff will also visit Business Mail Express, Inc., in Reston, VA, on November 18, 1993.

A report of the visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202-789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93-27553 Filed 11-8-93; 8:45 am]

BILLING CODE 7710-FW-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33128; File No. S7-8-90]

#### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of an Amendment to the National Market System Plan of OPRA

November 1, 1993.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 27, 1993, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"), permitting OPRA to waive subscriber fees in the case of market information provided to accredited colleges and universities for educational and research purposes. OPRA has designated this proposal as concerned solely with the administration of the plan, permitting it to become effective upon filing, pursuant to Rule 11Aa3-2(c)(3)(ii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

#### I. Description and Purpose of the Amendment

OPRA proposes to amend its plan by authorizing the Executive Director of OPRA to grant waivers from applicable subscriber fees to accredited, not-for-profit colleges and universities that obtain options market information for use only in connection with bona fide educational or research activities.

The purpose of the pilot program is to permit these educational institutions access to options market information

without having to pay OPRA's subscriber fees. OPRA believes that there is a public interest in facilitating access to securities market information for educational and research purposes by institutions of higher education. In order to encourage education and research in areas pertaining to the nation's financial markets, OPRA has determined that fee waivers are appropriate.

## II. Solicitation of Comments

Pursuant to Rule 11Aa3-2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7-8-90 and should be submitted by November 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-27479 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33131; File No. SR-CBOE-93-47]

### Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Temporary Suspension of Trading in Options

November 2, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 6.3, "Trading Halts," to provide limited authority to Post Directors, Order Book Officials, and under certain circumstances Designated Primary Market-Makers ("DPMs") to suspend trading in a class of options for a limited period of time immediately following a halt in trading of the underlying security, pending consideration of a longer-term trading halt by two Floor Officials. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to authorize the Post Director or Order Book Official (OBO) in respect of a given class of options, or if these

persons are not available, the Designated Primary Market-Maker in the class, to suspend trading in an options class for a period of time not to exceed five minutes whenever trading in the underlying security is halted. This limited authority to suspend options trading may be exercised only if the trading halt in the underlying security is evidenced by an "ST" symbol (for an exchange-listed security) or an "H" symbol (for a NASDAQ-NMS security) appearing on the Class Display Screen that displays current market information for the underlying security, or if such trading halt is otherwise verified by the senior person in charge of the Exchange's Control Room. Prior to the expiration of any temporary suspension of trading under the proposed rule change, the responsible Post Director, OBO or DPM is required to notify two Floor Officials in order to obtain a determination by them whether a trading halt in the effected options class should be declared under Exchange Rule 6.3(a). The proposed rule change applies only to the circumstance where there has been a trading halt in an underlying security, and has no application to "circuit breaker" trading halts under CBOE Rule 6.3A.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest by enabling the Exchange to suspend options trading promptly in response to verified trading halts in underlying securities.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-47 and should be submitted by November 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-27477 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33132; File No. SR-PTC-93-02]

#### Self-Regulatory Organizations; Participants Trust Co.; Order Approving on a Temporary Basis a Proposed Rule Change Relating to the Establishment of a Pilot Program Modifying PTC's Method of Paying Principal and Interest to Participants

November 2, 1993.

On August 3, 1993, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-93-02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> amending PTC Article III, Rule 2

regarding PTC's method of paying principal and interest ("P&I") to its participants. On August 16, 1993, PTC filed Amendment No. 1 to the proposed rule change.<sup>2</sup> Notice of the proposal appeared in the Federal Register on August 25, 1993.<sup>3</sup> No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change on a temporary basis until April 30, 1994.

#### I. Description

Pursuant to this rule change, PTC will establish a pilot program to permit participants to elect to receive 50% of the P&I payment made with respect to GNMA I securities, so long as they are collected and available, by means of an intraday Fedwire transfer of immediately available funds at approximately 12:00 noon on the distribution date. The balance of participants' P&I payments will be distributed by means of credits to the applicable cash balances of such participants for disbursement at end-of-day. These percentages, and the ability of participants to select the method of payment, may change upon future Commission approval taking into account P&I collection and disbursement experience, the impact on PTC's settlement cycle of intraday disbursement of P&I by Fedwire transfer, and participant response to the pilot program.

Each of PTC's participants holds its securities on deposit at PTC in one or more Master Accounts, each of which consists of one or more of the following processing subaccounts: Agency Account, Agency Segregation Account, Proprietary Account, Proprietary Segregation Account, Pledgee Account, and Limited Purpose Account. PTC maintains a cash balance for each Proprietary Account (including any associated Proprietary Segregation Account), Agency Account, Agency Segregation Account, Pledgee Account, and Limited Purpose Account. PTC posts credits and debits to the cash balances intraday in connection with certain securities transactions and funds transfers processed through PTC, in accordance with PTC's Rules and

Procedures. Cash balances are settled at the end of the business day, when participants wire the amount of any debit balances to PTC's settlement account, after which PTC pays participants the amount of any end-of-day credit balances.

Prior to the proposed rule change, PTC's Rules and Procedures provided that PTC would disburse P&I on securities deposited at PTC by means of a credit to the participant's applicable cash balance, resulting in the participant's receipt of available funds in the amount of the P&I, net of any account debits and/or credits, at the end of the day. The proposed rule change will allow PTC to make payment of a portion of P&I by intraday Fedwire transfer of immediately available funds, subject to certain limitations discussed below, with the remainder of P&I to be paid by means of a credit to the applicable cash balance.

The only source of funds which may be applied to the intraday distribution of P&I will be principal and interest payments collected and available in immediate funds at such time; PTC will not apply funds obtained from other sources to the early disbursement of P&I.<sup>4</sup> If the amount of GNMA I P&I collected and available for intraday distribution falls short of 50%, the shortfall will be allocated ratably among participants scheduled to receive intraday distributions according to the relative amounts of their scheduled distributions.<sup>5</sup>

#### II. Discussion

Section 17A(b)(3)(F) of the Act<sup>6</sup> requires that the rules of a clearing agency be designed to remove impediments to, and perfect the mechanism of, a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that PTC's

<sup>4</sup> PTC funding sources which may not be applied to the early disbursement of P&I include, but are not limited to, PTC's own funds, funds obtained from PTC's uncommitted P&I line of credit, as well as other borrowings which may be used to fund P&I distribution when effected as part of the end-of-day settlement. PTC will not change its P&I distribution program to permit intraday distribution of P&I from any source, other than P&I received and available, without first obtaining Commission approval in accordance with section 19(b)(2) of the Act. See letter from Leopold S. Rassnick, Vice President, General Counsel and Secretary, to Judith Poppalardo, Assistant Director, Division of Market Regulation, Commission, dated October 25, 1993. Vice President, General Counsel and Secretary, to Judith Poppalardo, Assistant Director, Division of Market Regulation, Commission, dated October 25, 1993.

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>2</sup> Amendment No. 1 corrects Exhibit A, Text of the Proposed Rule Change, by removing Section 1A of Article III, Rule 2. Section 1A was the subject of a 1990 proposed rule change that PTC later withdrew. See Securities Exchange Act Release No. 29533 (August 7, 1991), 56 FR 40930 (withdrawing proposed Section 1A). Letter from Leopold S. Rassnick, Vice President, General Counsel and Secretary, PTC, to Judith Poppalardo, Assistant Director, Division of Market Regulation, Commission, dated August 13, 1993.

<sup>3</sup> Securities Exchange Act Release No. 32772 (August 19, 1993), 58 FR 44869.

<sup>1</sup> 17 CFR 200.30-3(a)(12) (1992).

<sup>15</sup> U.S.C. 78s(b)(1).

proposal is consistent with that requirement.

Currently, PTC participants do not have access to P&I disbursements that are available at PTC intraday on payment date. Instead, the cash accounts of PTC's participants are credited the value of such distributions which only become available to participants as part of PTC's end-of-day net settlement. PTC's rule change will allow its participants to have access to disbursed P&I intraday.

PTC will document its P&I distribution program in its Participants Operating Guide. PTC represents, and the Commission agrees, that this will ensure that participants are notified of the current program and promptly become aware of any changes to it.<sup>7</sup> In addition, PTC will recommend to its Board of Directors that its rule be amended to incorporate explicitly the provision that intraday distribution of P&I will not be made from any source other than collected and available P&I.<sup>8</sup> The Commission believes these changes will ensure that PTC, its participants and others understand that any change in the source of intraday P&I funding will require approval from the Commission.

PTC disbursed a total of over \$111 billion in P&I payments to its participants in 1992, of which approximately \$104 billion constituted disbursement of P&I on GNMA I securities. The release of a portion of P&I funds to participants by means of an intraday Fedwire transfer will enable participants to have access to such funds sooner, allowing those participants the intraday use of such funds elsewhere. As stated above, the Commission finds that such access to P&I payments, subject to the conditions contained in this order, will increase liquidity in these markets and thereby help promote and perfect the national system for the clearance and settlement of securities transactions, consistent with section 17A of the Act.

The Commission today is granting PTC temporary approval of its proposed rule to disburse P&I via Fedwire and its pilot program to use Fedwire for the intraday disbursement of P&I. The period of temporary approval shall expire on April 30, 1994. As stated above, PTC will recommend to its Board of Directors before that time that PTC file a proposed rule change pursuant to section 19(b)(1) of the Act explicitly

codifying in its rules the limitation that intraday Fedwire payments of P&I will be made only from P&I funds collected and available at PTC. Permanent approval of PTC's program of intraday distribution of collected and available P&I will be contingent, in part, upon Commission approval of that rule change.

### III. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that PTC's proposed rule change (SR-PTC-93-02) be, and hereby is, approved on a temporary basis until April 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27476 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33130; File No. SR-PHLX-93-28]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Three-Year Rolling Cycle for Certain Minor Rule Plan Fines

November 2, 1993.

On June 28, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan")<sup>3</sup> and the Floor Procedure Advices ("Advices") thereunder, to establish a three-year rolling cycle for nine Advices.<sup>4</sup> Under the three-year rolling

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>3</sup> 17 CFR 19b-4 (1992).

<sup>4</sup> The Exchange's minor rule plan is administered pursuant to PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures."

<sup>5</sup> The following Advices will be subject to the proposed three-year rolling cycle: B-1, "Responsibility to Make Markets;" B-4, PHLX Registered Options Traders ("ROTs") Entering Orders from On-Floor and Off-Floor for Execution on the Exchange;" B-8, "Use of Floor Brokers;" C-3, "Handling ROTs' Orders;" C-4, "Floor Brokers Handling Orders for Same Firm;" C-9, "Floor Brokers and Clerks Trading in Their Customer Accounts;" F-8, "Failure to Comply with an Exchange Inquiry;" F-9, "Dual Affiliations;" and F-13, "Supervisory Procedures Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA")."

cycle, a violation of one of the nine Advices which occurs within three years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within three years of the previous violation of that Advice will be subject to the next highest fine specified in the Advice. The proposed rule change was noticed for comment in Securities Exchange Act Release No. 32678 (July 27, 1993), 58 FR 41305. No comments were received on the proposal.

Currently, under the PHLX's minor rule plan and the Advices thereunder, fines accrue on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine specified in the Advice (*i.e.*, the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. In order to further discourage the frequency of repeat violations, the PHLX proposes to place nine Advices<sup>5</sup> on a three-year rolling cycle.

Under the three-year rolling cycle, a violation of one of the nine Advices which occurs within three years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within three years of the previous violation of that Advice will be subject to the next highest fine. Thus, a third Advice violation within less than three years after a fine for a second Advice violation will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of that Advice.

The PHLX believes that these nine Advices are appropriate for a three-year cycle because the violations and situations addressed by the Advices are particularly important to the maintenance of a fair and orderly market in PHLX-traded securities. The PHLX notes, for example, that Advice B-1, "Responsibility to Make Markets," requires ROTs to make a two-sided market for any option series trading in the same crowd at which the ROT is trading, when requested by a floor official, specialist, or floor broker. The PHLX states that this requirement has been in place since the inception of the PHLX's minor rule plan in 1986 and is important to the functioning of the auction market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

<sup>5</sup> See note 4, *supra*.

<sup>7</sup> See *supra* note 4, letter from Leopold S. Rassnick, dated October 25, 1993.

<sup>8</sup> See letter from Leopold S. Rassnick, Vice President, General Counsel and Secretary, PTC, to Christopher J. McCurdy, Vice President, Federal Reserve Bank of New York, dated October 25, 1993.



rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 6(b)(6).<sup>6</sup> Section 6(b)(6) of the Act requires that the rules of the Exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. The Commission believes that the proposal to place nine Advices on a three-year rolling cycle will allow for prompt, effective and appropriate discipline of repeated violations of the Advices. The Commission notes that the fine schedules currently provided in the Advices are graduated to account for repeat offenders and that allowing the Exchange to impose higher penalties for violations of an Advice which occur more than once during a three-year period is consistent with the existing framework of graduated fines and may increase the PHLX's ability to deter repeat offenders.

The PHLX has stated that it will distribute a memorandum to the floor advising its members of the new three-year rolling cycle for the nine Advices.<sup>7</sup> The Commission believes that this notification will help to enhance the deterrent potential of the proposal while safeguarding the procedural rights of the Exchange's members by advising them of the new three-year rolling cycle.

In addition, the Commission notes that the Advices included in the proposal are important to the maintenance of a fair and orderly market.<sup>8</sup> The Commission believes that proposal is designed to provide the PHLX with a more effective means to

<sup>6</sup> 15 U.S.C. 78(b)(5) and (6) (1988).

<sup>7</sup> Telephone conversation between Edith Hallahan, Attorney, Market Surveillance, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on October 27, 1993.

<sup>8</sup> Advice B-1, "Responsibility to Make Markets," for example, requires a ROT to make a two-sided market for any option series at the trading post where the ROT is trading upon request by a floor broker, specialist, or floor official. Advice C-4, "Floor Brokers Handling Orders for Same Firm," prohibits floor brokers from accepting an opening or discretionary order for a ROT who is associated with the same member organization as the floor broker; Advice C-9, "Floor Brokers Trading in Their Customer Accounts," prohibits persons employed on the trading floor in association with a member or participant, other than ROTs and specialists, from initiating trades in PHLX options in their customer accounts while on the floor. In addition, Advice F-8, "Failure to Comply with an Exchange Inquiry," requires members to comply promptly with requests for information made by the Exchange's Market Surveillance Department in connection with disciplinary investigations and Advice F-13, "Supervisory Procedures Relating to ITSFEA," requires member organizations to maintain written supervisory procedures as required by ITSFEA.

enforce compliance with these Advices and to deter potential violations, thereby protecting investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-PHLX-93-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27478 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33120; File Nos. SR-Amex-93-30; SR-BSE-93-21; SR-CHX-93-22; SR-NYSE-93-34; SR-PHLX-93-47]

**Self-Regulatory Organizations; American Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Chicago Stock Exchange, Inc.; New York Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to an Extension of Certain Market-Wide Circuit Breaker Provisions**

October 29, 1993.

**I. Introduction**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the American Stock Exchange, Inc. ("Amex"), Boston Stock Exchange, Inc. ("BSE"), Chicago Stock Exchange, Inc. ("CHX"),<sup>3</sup> New York Stock Exchange, Inc. ("NYSE"), and Philadelphia Stock Exchange, Inc. ("PHLX") (collectively, the "Exchanges") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to extend the effectiveness of their respective rules that implement certain procedures that will be activated during volatile market conditions.<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>2</sup> 17 CFR 200.30-3(a)(12) (1992).

<sup>3</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>4</sup> 17 CFR 240.19b-4 (1989).

<sup>5</sup> As of July 8, 1993 the Midwest Stock Exchange, Inc. changed its name to the Chicago Stock Exchange, Inc. See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 32484 (File No. SR-MSE-93-13) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Certificate of Incorporation and Constitution to effect a name change) and 32489 (June 18, 1993), 58 FR 32485 (File No. SR-MSE-93-16) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Rules to make conforming changes in accordance with its name change).

<sup>6</sup> The NYSE filed an amendment to its proposed rule change requesting Commission approval of its proposal on an accelerated basis pursuant to Section 19(b)(2) of the Act. See letter from Donald

The Commission today solicits comments on the Amex, BSE, CHX, NYSE, and PHLX proposals from interested persons.

**II. The Proposals**

In 1988, the Commission approved circuit breaker proposals by the Exchanges.<sup>5</sup> In general, the circuit breaker rules provide that trading in all of these markets would halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points from its previous day's closing level and, thereafter, trading would halt for an additional two hours if the DJIA declines 400 points from its previous day's close.<sup>6</sup> These circuit breaker mechanisms are an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break.

The Commission approved the Amex, BSE, MSE, NYSE, PHLX and National Association of Securities Dealers' ("NASD")<sup>7</sup> circuit breaker proposals on a pilot program basis. Circuit breaker proposals by the Chicago Board Options Exchange, Inc. ("CBOE"),<sup>8</sup> the Pacific Stock Exchange, Inc. ("PSE")<sup>9</sup> and the Cincinnati Stock Exchange, Inc. ("CSE")<sup>10</sup> were approved by the Commission on a permanent basis rather than as a pilot program. In 1989, the Exchanges and the NASD filed, and the Commission approved, proposals to extend their respective pilot programs.<sup>11</sup> Subsequently, in 1990, 1991, and 1992 the Amex, MSE, NYSE, and PHLX filed,

Siemer, Director, Market Surveillance, NYSE to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated October 26, 1993 ("NYSE Amendment No. 1").

<sup>5</sup> See e.g., Securities Exchange Act Release Nos. 26386 (December 22, 1988), 53 FR 52904 (PHLX); 26218 (October 26, 1988), 53 FR 44137 (MSE); 26198 (October 19, 1988), 53 FR 41637 (Amex and NYSE); 26357 (December 14, 1988), 53 FR 51182 (BSE).

<sup>6</sup> If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of the trading day, trading will halt for the remainder of the day. If, however, the 250-point trigger is reached between one hour and one-half hours before the scheduled closing, or if the 400-point trigger is reached between two hours and one hour before the scheduled closing, the Exchanges would have the authority to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

<sup>7</sup> See Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41673.

<sup>8</sup> See note 7, *supra*.

<sup>9</sup> See Securities Exchange Act Release No. 26368 (December 16, 1988), 53 FR 51942.

<sup>10</sup> See Securities Exchange Act Release No. 26440 (January 10, 1989), 54 FR 1830.

<sup>11</sup> See Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881 (Order approving extension of Amex, BSE, MSE, NASD, NYSE and PHLX circuit breaker rules).

and the Commission approved, proposals to extend their respective pilot programs.<sup>12</sup> In 1991, the BSE filed, and the Commission approved, a proposal to extend its pilot program.<sup>13</sup> In 1990 and 1992, the NASD filed, and the Commission approved, proposals to extend its pilot program.<sup>14</sup> The proposals for the Exchanges are nearing their expiration dates and the Amex, NYSE, and PHLX have filed with the Commission proposals to extend further their respective pilot program until October 31, 1994. The BSE and CHX filings propose extending their respective pilot programs until October 31, 1995. The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the Report of the Presidential Task Force on Market Mechanisms ("Brady Report") and the Working Group's Interim Report<sup>15</sup> recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large, rapid market declines.<sup>16</sup> In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel

circuit breakers that were approved by the CFTC on a permanent basis.

### III. Commission Findings

Since the Commission approved these proposals in October 1988, the DJIA has not experienced a one day, 250-point decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and, accordingly, the Commission believes that the pilot programs should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid, one day market decline that can have a destabilizing effect on the nation's financial markets and participants in these markets.

Accordingly, the Commission finds that the proposed rule changes filed by the Exchanges, including NYSE Amendment No. 1, are 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 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes, including NYSE Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register* because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable the pilots to continue on an uninterrupted basis. Due to the importance of these circuit breakers for market confidence, soundness, and integrity, it is necessary and appropriate that these procedures continue on an uninterrupted basis. The Commission believes, therefore, that granting accelerated approval of the proposed rule changes, including NYSE Amendment No. 1, is appropriate and consistent with sections 6 and 19(b)(2) of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the

Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the respective principal office of each above-mentioned exchange. All submissions should refer to file number SR-AMEX-93-30, SR-BSE-93-21, SR-CHX-93-22, SR-NYSE-93-34, or SR-PHLX-93-47, and should be submitted by November 30, 1993.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the Amex, NYSE, and PHLX proposed rule changes (SR-Amex-93-30, SR-NYSE-93-34 and SR-PHLX-93-47), including NYSE Amendment No. 1, are approved until October 31, 1994 and that the BSE and CHX proposed rule changes (SR-BSE-93-21 and SR-CHX-93-22) are approved until October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-27560 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33141; File No. SR-NASD-93-61]

### Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the SelectNet Service

November 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 1, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change that will modify the operational features

<sup>12</sup> See Securities Exchange Act Release Nos. 28580 (October 25, 1990), 55 FR 45895; 29868 (October 28, 1991), 56 FR 56535; 31387 (October 30, 1992), 57 FR 53157 (Orders approving extensions of Amex, MSE, NYSE and PHLX circuit breaker rules).

<sup>13</sup> See Securities Exchange Act Release No. 29868 (October 28, 1991), 56 FR 56535 (Order approving extension of BSE circuit breaker rules through October 31, 1993). The BSE's pilot program was extended for two years in 1989; therefore, it was not necessary to extend it in 1990.

<sup>14</sup> See Securities Exchange Act Release Nos. 28694 (December 12, 1990), 55 FR 52119; 30304 (January 29, 1992), 57 FR 4658 (Orders approving extension of NASD circuit breaker rules, the most recent order approving the pilot through December 31, 1993).

<sup>15</sup> The Working Group in Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the Chairmen of the Commission, Board of Governors of the Federal Reserve System and the Commodity Futures Trading Commission ("CFTC"), and the Under Secretary for Finance of the Department of the Treasury.

<sup>16</sup> In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

<sup>17</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>18</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>15</sup> 15 U.S.C. 78s(b)(1) (1988).

of the SelectNet service. The NASD is proposing to install a price validation screen that will prohibit entry of orders into SelectNet priced away from the inside market on Nasdaq. The NASD will amend the SelectNet User Guide to clarify that orders entered into SelectNet during normal market hours (9:30 a.m. to 4 p.m.) will be prohibited by the system if the orders are priced outside the best bid or offer in the Nasdaq system, unless unusual market conditions, such as locked, crossed, one-sided, or no-quote markets exist in a security.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing a change to the operation of the SelectNet service because of a large number of erroneous transactions occurring through the service. SelectNet is the screen-based communication service offered to members of the NASD to facilitate negotiation of transactions in securities through automated means, by-passing the need for telephone contact. SelectNet was developed to replicate the trading environment of the dealer telephone market and to facilitate the same type of trading without the necessity of telephone contact. SelectNet allows members to direct orders to one or all market makers in a security and negotiate the terms of those orders through counter-offers entered into the system.

The NASD is proposing to modify the operational functionality of SelectNet by installing a price validation screen that will prohibit entry of orders priced away from the inside market on Nasdaq. The NASD has determined that over a thousand orders a day, on average, are being placed in SelectNet at prices above the offer or below the bid resulting in over 100 executions a day, on average, at erroneous prices wholly unrelated to current market prices. The

NASD believes that these orders are put into SelectNet in two ways: (1) As errors, where the order entry firm intended to place the order at or within the inside bid and offer and mistyped the trade information into the system, or (2) as a concerted attempt to trick recipients of the orders into executing obviously erroneous trades. For example, if the inside market in a Nasdaq security is 20 bid, 20¼ offer, an order entry firm may place an order to buy stock priced at 19¾. Traders traditionally deal in fractions, frequently not even stating the integer amount of a price when transacting business over the telephone, and an order priced at 19¾ could easily be read or interpreted as 20%. Thus the market maker would accept the order, believing that it was executing an order priced within the spread, at 20%. Instead, the market maker would have executed the order a full point below the price it thought it was getting, and ¾ of a point below the best bid. In our review of the orders entered into SelectNet priced outside the inside quote in Nasdaq in the month of September 1993, the NASD found that one firm alone accounted for over 40 percent (more than 15,000 orders) of all orders entered outside the inside quote. Since SelectNet is designed to replicate a telephone trading environment, and trade errors of this magnitude away from the inside market could not occur over the telephone with two members communicating verbally, the NASD is proposing to automate this protocol through implementation of a screening function.

The NASD is proposing that the operation of the system be modified to prohibit entry of orders priced away from the inside market in Nasdaq at the time of entry during normal market hours, 9:30 a.m. until 4 p.m. The Nasdaq system calculates an inside market from approximately 8:30 a.m. until 6:30 p.m., and the SelectNet service is available for members prior to market opening (9 a.m. to 9:30 a.m.) and following market close (4 p.m. to 5:15 p.m.). Since the NASD does not wish to inhibit members' ability to trade using SelectNet during these off-hours sessions, where the inside market may be one-sided or may simply reflect the closing bid and offer on Nasdaq, the screen for out-of-range orders will not be implemented outside of normal market hours. Additionally, to preserve the functionality of SelectNet during fast markets, if a market in a security is locked or crossed (or if a one-sided quote or no quote condition exists) the system will not prohibit entry of orders

priced outside the inside. Finally, during emergency market conditions, the NASD has the ability to remove the screen and allow all orders into the SelectNet service.

The NASD is very concerned with the growing use of technology to circumvent standard trading practices and common ethics to disadvantage market participants. The NASD is also very concerned that the integrity of the Nasdaq market and its automated systems is being negatively effected by use of SelectNet to purposefully transact trades that are misleading and erroneous because they are priced above or below the market. Every trade executed in SelectNet outside the best Nasdaq market results in misleading information disseminated to the investing public. For example, when an order priced below the current inside market is executed erroneously through SelectNet, it immediately prints on the tape, is transmitted to the news media, and filed with historical data. Even if the executing firm avails itself of the procedures in the NASD's Uniform Practice Code<sup>2</sup> to break the trade, the public has already been misinformed, issuers are confused as to the trading range of their stocks, investors may question the status of open limit orders priced below the market, and the trading range for the day may be published with the erroneous information. Permitting trading activity which on its face is calculated to confuse and injure market participants, in a service operated by a self-regulatory organization charged with the responsibility to ensure that its markets and systems operate free from fraudulent, unethical, and manipulative activity, is unconscionable. Such activity should not be permitted in a system designed to aid the market, and the proposed change to SelectNet will improve the integrity and operations of the system. SelectNet will continue to operate as an interactive, negotiation trading service, to facilitate trading in the Nasdaq marketplace, but will not be used as a system that enables order entry firms to accomplish erroneous transactions that would never be executed over the telephone. The NASD is now making it clear that use of SelectNet for such activity is inappropriate by screening such orders out of the system.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(a)(1)(B) and (C) of the Act. Sections 15A(b)(6) requires that the rules of a national securities

<sup>2</sup> NASD Manual, Uniform Practice Code, Sec. 70, (CCH) ¶3570.

association, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A states that new data processing and communications techniques create the opportunity for more efficient and effective market operations and that it is in the public interest to assure economically efficient execution of securities transactions. Since SelectNet is a communications service designed to accommodate efficient and economic negotiation and acceptance of orders, the rule proposal is appropriate because the system changes will eliminate erroneous executions due to orders being entered outside of the inside market on Nasdaq. The NASD believes that Congress' mandate to utilize automated means to facilitate the operations of a national market system to the fullest extent possible is not a license to steal from market participants risking capital on a daily basis in The Nasdaq Stock Market. Moreover, by prohibiting the entry of orders which would otherwise not be voiced or taken seriously in a telephone-based dealer market, the NASD believes the proposal will reduce investor confusion with erroneous trade reports and will promote fair and orderly markets.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

This filing parallels substantially the NASD's previous rule filing SR-NASD-93-60 which was filed and became effective immediately pursuant to section 19(b)(3)(A) of the Act.<sup>3</sup> In response to the NASD's previous filing, the Commission received one comment.<sup>4</sup> On October 29, 1993, pursuant to section 19(b)(3)(C) of the

Act, the Commission summarily abrogated SR-NASD-93-60.<sup>5</sup>

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the *Federal Register*. The system change to effect the price validation screen has already been developed and the NASD believes that the SEC can find good cause for accelerating approval. The modification to SelectNet will prohibit the entry of orders priced away from the inside Nasdaq market except in certain unusual market conditions. The NASD believes that this change is appropriate for accelerated effectiveness pursuant to section 19(b)(2) under the Act because SelectNet was designed to provide members an automated means to effect transactions at prices or trade sizes superior to the publicly disseminated quotations. It was never intended to provide a platform for trickery and for generation of misleading transaction reports. The NASD believes that it is critical to take action to revise the administration of the SelectNet service to end this destructive and unconscionable trading activity.

When SelectNet was first implemented in 1990, the SEC approved the operation of the facility as an automated communication system to replicate telephone negotiation and found it to be consistent with the requirements of the Act as SelectNet facilitated the ability of broker-dealers to efficiently execute customer orders by providing participants with another vehicle to negotiate, execute, and compare transactions.<sup>6</sup> When the SEC approved expanded hours for the SelectNet service, it stated that "investors will benefit from real time trade reporting during off-hours sessions because it will increase their ability to monitor the quality of executions they receive from their intermediaries executing trades on SelectNet."<sup>7</sup> The SEC also found that the "market transparency provided by real-time trade reporting will help to keep prices in line by inhibiting the ability of one market maker to trade at non-

competitive prices."<sup>8</sup> The NASD believes that the current policy to eliminate erroneous trades from the service is consistent with the rationale articulated in both of these Commission approval orders. The Commission commented on the value of transparency in furthering market participants' ability to monitor the quality of their executions. The NASD believes that the new operation advances the stated purpose of the service to replicate a dealer, telephone trading environment, and also enhances the integrity of the marketplace by eliminating erroneous trade reports going out to the investing public.

In addition, the filing of this rule change for accelerated effectiveness is justified by the fact that the NASD believes the trading strategies employed raise serious concerns under Article III, Section 1 of the NASD Rules of Fair Practice. As noted above, the orders above or below the inside Nasdaq market appear to be entered purposefully to mislead other market makers. Moreover, the resulting transaction reports away from the actual market prices (and in many cases subject to reversal under the NASD's Uniform Practice Code procedures in Section 70) regularly mislead and confuse public investors, issuers, and other market participants. Accordingly, the NASD believes that it is appropriate and fully consistent with the purposes of the Act to submit this change for accelerated effectiveness and requests that the Commission approve the rule change on an accelerated basis.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

<sup>3</sup> Securities Exchange Act Release No. 33101 (October 25, 1993), 58 FR 58363 (November 1, 1993).

<sup>4</sup> See Letter from Simon S. Kogan to Margaret McFarland, Deputy Secretary, SEC (October 25, 1993).

<sup>5</sup> Securities Exchange Act Release No. 33116 (October 29, 1993), 58 FR \_\_\_\_\_.

<sup>6</sup> Securities Exchange Act Release No. 28636 (November 21, 1990), 55 FR 49732 (November 30, 1990).

<sup>7</sup> Securities Exchange Act Release No. 30581 at 6 (April 14, 1992), 57 FR 14596 (April 21, 1992).

<sup>8</sup> *Id.*, at 7.

submissions should refer to file number SR-NASD-93-61 and should be submitted by November 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27559 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Three Over-the-Counter Issues and to Withdraw Unlisted Privileges in Three Over-the-Counter Issues**

November 3, 1993.

On October 29, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, i.e., securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-11468 ...	CRUS ...	Cirrus Logic, Inc., Common Stock, \$.01 par value.
7-11469 ...	MFST ...	Mfs Communications Company, Inc., Common Stock, \$.01 par value.
7-11470 ...	QCOM ..	Qualcomm Inc., Common Stock, \$.0001 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7-11471 ...	KOIL .....	Kelly Oil Corporation, Common Stock, \$.01 par value.
7-11472 ...	MCCS ...	Medco Containment Services, Common Stock, \$.01 par value.
7-11473 ...	TSNG ...	Tseng Labs Incorporated, Common Stock, \$.005 par value.

Replacement issues are being requested due to lack of trading activity.

**Comments**

Interested persons are invited to submit, on or before November 24, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27558 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19832; 811-2385]

**IDS Nuveen Income Trust, Series 1; Application for Deregistration**

November 3, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** IDS Nuveen Income Trust, Series 1.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on September 27, 1993, and amended on October 22, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on November 29, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Law Clerk, at (202) 272-3809, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is a unit investment trust created under the laws of Illinois pursuant to a trust indenture agreement. On June 25, 1973, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective, and applicant's initial public offering commenced on September 6, 1973.

Applicant's sponsor is John Nuveen & Co. (the "Sponsor"), and its trustee is American National Bank and Trust Company of Chicago (the "Trustee").

2. According to the terms of the trust indenture, when the value of the trust fund is reduced to less than twenty percent of the aggregate principal amount of bonds initially deposited in the trust fund, the Trustee, at the direction of applicant, is to terminate and liquidate the trust fund. As of February 14, 1992, the securities held in applicant's portfolio totalled less than forty percent, and the Sponsor anticipated that after the next monthly distribution would total less than twenty percent.

3. On February 14, 1992, the Trustee sent a notice of termination to all unitholders stating, among other things, that applicant would be terminated on February 25, 1992. Procedures were set forth therein to enable each unitholder to receive his or her pro rata share of the final distribution of principal and interest. Subsequent notifications were sent on April 23, 1992, June 23, 1992, and in August of 1993. Annual

notifications will be sent to unitholders who remain outstanding.

4. Applicant has 31 unitholders remaining and a total of 1,360 outstanding units. The Trustee retains accounts from which it will pay as yet unclaimed amounts representing final distributions to be made to unitholders. Once applicant's property is presumed abandoned, the Illinois Revised Uniform Disposition of Unclaimed Property Act requires the Trustee to report and remit all abandoned property to the Director of the Illinois Department of Financial Institutions (the "Director"). Any person claiming an interest in any property previously delivered to the Director must file a claim with the Director.

5. Applicant is not a part to any known litigation or administrative proceedings.

6. All expenses incurred and to be incurred in connection with the liquidation of applicant and deregistration have been borne by the assets of the trust pursuant to the trust indenture.

7. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of applicant.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27563 Filed 11-8-93; 8:45 am]

BILLING CODE 8010-01-M

**SMALL BUSINESS ADMINISTRATION**

**Reporting and Recordkeeping Requirements Under OMB Review**

**ACTION:** Notice of Reporting Requirements Submitted for Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted within 30 days of this publication in the *Federal Register*. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

**Agency Clearance Officer:** Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629

**OMB Reviewer:** Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

**Title:** Disaster Home/Business Loan Inquiry Record

**Form No.:** SBA Form 700

**Frequency:** On Occasion

**Description of Respondents:** Applicants for SBA Disaster Assistance as a result of administratively declared disasters

**Annual Responses:** 3,005

Annual Burden: 751

Dated: November 4, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-27582 Filed 11-8-93; 8:45 am]

BILLING CODE 8025-01-M

**Anker Capital Corp.; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company**

[Application No. 99000101]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Anker Capital Corporation, 208 Capitol Street, suite 300, Charleston, West Virginia 25301, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers and directors are:

Name	Title
John J. Faltis	President & Director.
Philip B. Sparks.	Vice President, Secretary, Treasurer, and Director.
James A. Walls.	Director.

Anker Group, Inc. owns all the stock of Anker Capital Corporation. Mr. John J. Faltis and Mr. W. G. Rottier are the beneficial owners of all of the Anker Group, Inc. stock.

Anker Capital Corporation will be managed by Fourth Venture Associates, Inc. The officers, directors, and shareholders of Fourth Venture Associates, Inc. are:

Name	Title	Ownership percentage
Thomas E. Loehr	President and Director	100
Anthony W. Mazelon	Secretary and Director	0
Frederick L. Russell, Jr.	Director	0
Richard A. Rubin	Director	0
Arno J.S. Paas	Director	0

The applicant will begin operations with capitalization of \$2,500,000 and will be a source of debt and equity capital for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and

character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Charleston, West Virginia. (Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)  
**Charles R. Hertzberg,**  
*Associate Administrator for Investment.*  
 [FR Doc. 93-27585 Filed 11-8-93; 8:45 am]  
 BILLING CODE 8025-01-M

[Application Number: 08/08-0148]  
**CI Capital Group, Inc.; Notice of Application for a License to Operate as a Small Business Investment Company**  
 An application for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C.

661, *et seq.*) has been filed by CI Capital Group, Inc., 60 East South Temple, suite 2200-3, Salt Lake City, Utah 84111 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1993).  
 The proposed Management and Ownership of the Applicant, a Utah Corporation are as follows:

Name	Title or relationship	Percent of equity
Christopher Black Cannon, 875 East 1600 North, Mapleton, Utah 84663 .....	President/Director (Chairman) & Shareholder .....	45.5
Zion's First National Bank, 1380 Kennecott Blvd., Salt Lake City, Utah 84133 ..	Shareholder .....	45.5
Utah Technology Equity Foundation, 419 Wakara Way, Suite 215, Salt Lake City, Utah 84108.	Shareholder .....	9.0
Scott Lionel Crowley, 12031 S. Bluff, View, Sandy, Utah 84092 .....	Executive V.P./Director .....	0
Darral Glen Clarke, 4102 Quail Run Drive, Provo, Utah 84604 .....	Director .....	0
Robert Henry Daines, 3018 Comanche Lane, Provo, Utah 84604 .....	Director .....	0
K. Fed Skousen, 4175 North 200 East, Provo, Utah 84604 .....	Director .....	0
Cannon Industries, Inc., 60 East South Temple, Suite 2200, Salt Lake City, Utah 84111.	Investment Advisor .....	0

The Investment Advisor of the Applicant will be Cannon Industries, Inc., a Utah corporation, wholly owned by Christopher Black Cannon.

The Applicant will begin operations with private capital of \$5.5 million. The Applicant will conduct its activities principally within the State of Utah, but will invest in other Western States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the Applicant under their management including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

This Notice represents an update to the original Application that has been amended, August 25, 1993, to reflect the above stated information. The original Notice was published on April 15, 1991 (Vol. 56, No. 72 F.R. p. 15127) stating that an application has been filed by CI Capital Group Inc. Interested parties were given until the close of business Wednesday 15, 1991. No comments were received on the original Notice.

Notice is further given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Salt Lake City, Utah.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)  
 Dated: November 2, 1993.  
**Charles R. Hertzberg,**  
*Associate Administrator for Investment.*  
 [FR Doc. 93-27584 Filed 11-8-93; 8:45 am]  
 BILLING CODE 8025-01-M

[License No. 08/08-0147]  
**First Security Business Investment Corp.; Notice of Issuance of a Small Business Investment Company License**

On July 1, 1993 a notice was published in the *Federal Register* (Vol. 58, No. 125 F.R. p. 35498) stating that an application has been filed by First Security Business Investment Corporation with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing Small Business Investment Companies (13 CFR 107.102 (1993)) for a license as a Small Business Investment Company.

Interested parties were given until close of business Monday August 2, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08-0147 on October 18, 1993, to First Security

Business Corporation to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)  
 Dated: November 3, 1993.  
**Charles R. Hertzberg,**  
*Associate Administrator for Investment.*  
 [FR Doc. 93-27583 Filed 11-8-93; 8:45 am]  
 BILLING CODE 8025-01-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**  
 [CGD 93-074]

**Chemical Transportation Advisory Committee; Request for Applications**

AGENCY: Coast Guard, DOT.  
 ACTION: Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC).

**DATES:** Completed applications and résumés should be submitted to the Coast Guard before January 15, 1994.

**ADDRESSES:** Persons interested in applying for membership on CTAC may obtain an application form by writing to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, or by calling the points of contact in the following paragraph.

**FOR FURTHER INFORMATION CONTACT:** CDR Kevin J. Eldridge, Executive Director, or Mr. Frank K. Thompson, Assistant to the Executive Director;

telephone (202) 267-1217, fax (202) 267-4816.

**SUPPLEMENTARY INFORMATION:** The Chemical Transportation Advisory Committee provides advice and consultations to the Chief, Office of Marine Safety, Security and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels, barges and in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating U.S. positions at meetings of the International Maritime Organization.

The Committee usually meets at least once a year at U.S. Coast Guard Headquarters, Washington, DC. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for eight expiring terms and for any other existing vacancies. Each member serves for a term of three years and may be reappointed. All members serve without compensation (neither travel nor per diem) from the Federal Government.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

Dated: November 2, 1993.

**R.C. North,**  
*Captain, U.S. Coast Guard, Acting Chief,  
Office of Marine Safety, Security and  
Environmental Protection.*

[FR Doc. 93-27565 Filed 11-8-93; 8:45 am]  
BILLING CODE 4910-14-M

#### Federal Aviation Administration [AC 91-53A]

#### Noise Abatement Departure Profiles

**AGENCY:** Federal Aviation Administration (FAA), DOT.  
**ACTION:** Notice of availability.

**SUMMARY:** The Federal Aviation Administration (FAA) is announcing the availability of Advisory Circular (AC) 91-53A which provides standardized guidelines for noise abatement departure profiles (NADP's) for all civil turbojet airplanes with a maximum certificated gross takeoff weight of more than 75,000 pounds operating within the United States. The AC provides a general framework for the development of one or two departure profiles for each aircraft type operated by any interested airplane operator. These departure profiles as adjusted to specific aircraft

type would provide one profile for reducing noise close to the airport and one profile that is designed to reduce noise further out from the airport. The revised AC cancels AC 91-53, Noise Abatement Departure Profile, dated October 17, 1978.

**DATES:** This AC is effective on July 22, 1993.

**ADDRESSES:** A copy of AC 91-53A, Noise Abatement Departure Profiles, may be obtained by writing to U.S. Department of Transportation, General Services Section, M-443.2, Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Wesley Te Winkle, Flight Standards Service, Special Programs Branch, AFS-430, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267-3728.

**SUPPLEMENTARY INFORMATION:** Draft AC 91-53A was published in the Federal Register Friday, August 7, 1992 (Vol. 57, No. 153, Page 34990). Interested persons were invited to comment on the proposed AC by submitting written data, views, or arguments, concerning environmental, energy, or economic impacts. The FAA reviewed all comments for recommended changes to the AC or the proposed action of the AC. There were no comments on the safety aspects of the AC, only comments on the number and use of the proposed NADP's. Therefore, the FAA did not change the minimum acceptable criteria proposed in the draft AC. Eighteen commenters responded. Support of the action came from individual airport operators, the U.S. Environmental Protection Agency, and pilot groups. Opposition to the action came from an international air transport organization, an environmental group concerned with aircraft noise, an airport operator's association, and two city governments. Comments on the proposed number of NADP's, proposing either an increase of profiles to accommodate numerous noise sensitive areas, or the reduction of NADP's to one, were considered. The Noise Abatement Takeoff Working Group recommended two profiles to provide some communities with noise relief and still maintain a reasonable standardization of flight profiles. The FAA determined that two profiles were appropriate. The FAA encourages each airplane operator to use the appropriate NADP when an airport operator requests its use to abate noise for either a close-in or distant community.

Dated: September 15, 1993.

**Thomas C. Accardi,**  
*Director, Flight Standards Service.*  
[FR Doc. 93-27534 Filed 11-8-93; 8:45 am]  
BILLING CODE 4910-13-M

#### Advisory Circular: Change 1 to AC 23-8A, Flight Test Guide for Certification of Part 23 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.  
**ACTION:** Notice of issuance of Advisory Circular (AC).

**SUMMARY:** This notice announces the issuance of change 1 to AC 23-8A, Flight Test Guide for Certification of Part 23 Airplanes. Change 1 to AC 23-8A provides guidelines for the use of reverse thrust during accelerate-stop and landing, cockpit visibility, revised guidance for spin recovery after abnormal use of controls and other substantive changes.

**DATES:** Change 1 to AC 23-8A was issued by the Central Region, Small Airplane Directorate, on August 30, 1993.

**HOW TO OBTAIN COPIES:** A copy of Change 1 to AC 23-8A may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or from any of the Government Printing Office bookstores located in major cities throughout the United States. Identify the publication as Change 1 to AC 23-8A, Flight Test Guide for Certification of Part 23 Airplanes, Stock Number SN 050-007-01013-3. The cost of Change 1 to AC 23-8A is \$6.50. Send check or money order with your request, made payable to the Superintendent of Documents. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No C.O.D. orders are accepted.

Issued in Kansas City, Missouri, October 27, 1993.

**Barry D. Clements,**  
*Manager, Small Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 93-27531 Filed 11-8-93; 8:45 am]  
BILLING CODE 4910-13-M

#### RTCA, Inc., Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118-137 MHz); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 172 meeting to be held November 30-December 3, starting at 9:30 a.m. (first



day only). Place: RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036 (first three days only). Mitre Corporation, 7525 Colshire Drive, McLean, VA 22102-3481 (last day only).

The agenda for this meeting is as follows:

- (1) Introductory remarks;
- (2) General Discussion of activities;
- (3) WG's 1 & 2 Meet sequentially (equivalence of 1½ day each) (a) WG 1, VHF Communications System Recommendations (b) WG 2, VHF Data Radio Signal-in-Space MASPS;
- (4) Plenary reconvenes at Mitre Corp. in McLean, VA (a) Demonstration of VHF TDMA system (b) Approval of Summary of seventh meeting (c) Review Progress of Working Groups (d) Task Assignment;
- (5) Other Business;
- (6) Date and place of next meeting.

Note: Specific Schedule: Tuesday, November 30, 1993—WG 1 (1½ days), Wednesday, December 1, 1993 1300—WG 2 (1½ days), \*Friday, December 3, 1993 0900—Plenary (1 day).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 2, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93-27533 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

## National Highway Traffic Safety Administration

[Docket No. 93-79; Notice 1]

### Fisher-Price, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Fisher-Price, Inc. (Fisher-Price) of East Aurora, New York, has determined that some of its child safety seats fail to comply with the flammability requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and has filed an appropriate report pursuant to 49 CFR part 573. Fisher-Price has also petitioned to be exempted

from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

During the period of January 1988 through the present, Fisher-Price produced approximately 3.3 million child restraint seats with shoulder belt webbing that might not comply with the flammability requirements of FMVSS No. 213.

The Fisher-Price webbing restraint system is manufactured in three phases. First, raw webbing is manufactured by AlliedSignal in Knoxville, Tennessee. Second, the raw webbing is sent to another AlliedSignal plant located in Mexico, which cuts the webbing to length and attaches the buckles. Finally, the webbing/buckle assemblies are sent to Jones and Vining, Inc., in Lewiston, Maine, which attaches them to the "T-Shield," a soft, molded polyurethane cushion. A foam molding process is used to attach the T-Shield to the webbing.

NHTSA took two samples of the harness webbing from a Fisher-Price child safety seat and had them tested by the Detroit Testing Laboratory. The two samples of webbing burned at rates of 4.4 and 4.7 inches per minute, thus failing the test specified in FMVSS No. 213. When the agency informed Fisher-Price of the test failures, Fisher-Price conducted further tests on the webbing, both in its raw state and in its molded state. AlliedSignal conducted FMVSS No. 302 compliance tests for Fisher-Price on webbing which had gone through the molding process at Jones and Vining (hereinafter "molded webbing"). On April 12, 1993 and May 10, 1993, eleven samples which were tested either self-extinguished or had burn rates from 1.84 to 2.91 inches per minute, thus complying with the standard. On August 19, 1993, AlliedSignal tested seven raw webbing

samples, all of which either did not ignite or self extinguished, resulting in a burn rate of zero, and twelve molded webbing samples, yielding burn rates of 2.0 to 5.8 inches per minute.

Fisher-Price supports its petition for inconsequential noncompliance with the following rationale, as well as webbing test photographs, test data, a videotape of the tests, and the professional resumes of the two fire experts which are available for review in the NHTSA docket. In addition, Fisher-Price met with NHTSA officials to reemphasize some of the points that it presented in its petition. A record of this meeting is contained in the NHTSA docket.

Fisher-Price commissioned two fire experts, James H. Shanley, Jr., P.E., a licensed fire protection engineer, and Patrick M. Kennedy, an experienced fire investigator, to conduct a study to assess the impact on motor vehicle safety of the noncompliance. The study consisted of conducting tests to compare the webbing with typical children's clothing, to compare the webbing with other interior elements of a typical motor vehicle, to search available literature and databases for instances where the webbing in a child safety seat contributed to a fire, and to determine whether the noncompliance would have an impact on an individual's ability to evacuate a burning motor vehicle.

For the tests which compared the burn rates and ignition temperatures of typical children's clothing to that of the noncompliant webbing, the first test, American Society for Testing and Materials (ASTM) D1919, "Standard Test Method for Ignition Properties of Plastics," was to determine ignition temperatures. The ignition temperatures of the molded webbing was 796° Fahrenheit (F); ignition temperature of a 100 percent cotton "T" shirt was 571°F, and ignition temperature of 50 percent cotton/50 percent polyester sweatpants was 676°F. The study concluded that the molded webbing is "manifestly more resistant to ignition than typical children's clothing."

The second test, 16 C.F.R. 1610 or ASTM D1230, "Standard Test Method for the Flammability of Apparel Textiles," was to determine the relative flammability of each of the three above-mentioned materials. This test determines the time it takes the sample to burn a distance of five inches while suspended at a 45° angle. In this test, the molded webbing took 13.51 times longer to burn than is allowed by the standard. Further, the "T" shirt and the sweatpants burned at rates that were three and 2.2 times faster, respectively, than the molded webbing.

\*Those attending the Plenary session on Friday are asked to contact Lisa M. Nachman at Mitre with necessary information so that clearance can be arranged in advance.

The third test, ASTM 3659, "Standard Test Method for Flammability of Apparel Fabrics by Semi-Restraint Method," measures the burn rates in a vertical configuration. The average vertical burn rates of the materials were as follows: molded webbing—6.36 inches per minute; sweatpants—19.79 inches per minute; and "T" shirt—30.41 inches per minute. From these results, the study concluded that the molded webbing is significantly less flammable than typical children's clothing.

Finally, a series of tests were conducted to determine the relative ease or difficulty of igniting each of the three materials using ignition sources most typically expected to be found in a motor vehicle: a lit cigarette, a paper match and a butane lighter. None of the materials ignited using a smoldering cigarette placed on top of the horizontally suspended material sample. The "T" shirt ignited in one-fifth the time (three seconds), and the sweatpants ignited in slightly less than one-fourth the time (four seconds) it took the molded webbing to ignite (15 seconds) using a paper match flame. The "T" shirt ignited in slightly less than one-sixth the time (2.5 seconds), and the sweatpants ignited in nearly one-fifth the time (three seconds) it took to ignite the molded webbing (14.4 seconds) using a butane lighter flame.

Messrs. Kennedy and Shanley concluded that, based on these tests and on their expertise in this area, when compared to the relative ease of ignition of typical children's clothing, the molded webbing material presents no risk to the safety of the occupant of the Fisher-Price car seat.

Messrs. Shanley and Kennedy also examined how the webbing would contribute to a vehicle fire in comparison with the other interior elements of a typical motor vehicle. They found that the molded webbing contained in the Fisher-Price child safety seats comprises 0.019 percent of the combustible material in the interior of the average motor vehicle; it weighs approximately 0.06 pound and the total combustible material in the average motor vehicle weighs 337 pounds. From this, they concluded that the molded webbing comprises an inconsequential percentage of material when compared to the total amount of combustible material contained in a typical motor vehicle's interior. Mr. Shanley concluded that "the removal of this material would have no effect on any interior motor vehicle fire and, conversely, that its presence in the vehicle would not, to any degree, increase the risk, of an interior vehicle fire."

Messrs. Shanley and Kennedy also searched all available databases and source materials for information relating to the involvement of child car seats in interior motor vehicle fires. Their research focused on the possibility of an interior motor vehicle fire originating in a child car seat, especially where it appeared that the shoulder belt webbing may have been the original fuel source. Their search did not reveal any instances where an interior motor vehicle fire originated in a child car seat or where a car seat contributed in any way to an interior motor vehicle fire.

With regard to the occupants of a motor vehicle having sufficient time to evacuate the vehicle in the event it caught fire, Mr. Shanley stated that:

It is a basic principle of fire protection that the ability of a person to evacuate and survive a fire is strictly dependent upon two conditions: (1) the severity or magnitude of the fire, and (2) The time of exposure to the fire. In a motor vehicle fire situation, the threat to life is the inhalation of smoke and hot gases (asphyxiation) and exposure to the heat of the fire (burns). The design of most motor vehicles ensures that unimpaired occupants can evacuate quickly. Therefore, the goal of fire protection efforts must focus on reducing the severity of the fire. The severity of a fire is determined by its physical size, the quantity of available fuel, the total quantity of heat released, and the rate at which that heat is released. A complete assessment of the fire threat must include an assessment of all of these factors.

Limiting the flame spread rate of a motor vehicle's combustible interior materials, as measured and specified by FMVSS 302, does not suffice for a complete fire hazard assessment. The 0.06 lbs (sic) (30.2 grams) of webbing material used in Fisher-Price car seats is an insufficient quantity of material to produce a potentially lethal fire threat to the occupants of a motor vehicle. *Therefore, the time available for an occupant to safely evacuate and survive a motor vehicle fire is not influenced to any degree by a material, such as the molded webbing, which comprises a mere 0.019% of the total combustible material in a motor vehicle's interior (emphasis original).*

Fisher-Price believes that:

A remedial action campaign would not further the purposes of the Traffic and Vehicle Safety Act (the "Act"), 15 U.S.C. 1391 et seq. (1982), in promoting the marketing of safe motor vehicles and their accessories, such as child car seats. The dominant theme of the regulations propounded in furtherance of the Act is that accessories such as car seats be safe; indeed, the stated basis in the Act for the granting of an exemption from the remedial action requirements of the Act is that the noncompliance would have only an inconsequential impact on the safety of

motor vehicles. 15 U.S.C. 1417; 49 C.F.R. 556.1, 556.2.

Child safety advocates, automobile safety advocates and the NHTSA all acknowledge the negative impact of a remedial action campaign based on a technical noncompliance with a particular regulation that does not, as a practical matter, have any effect on the safety of the occupants of a motor vehicle. The NHTSA itself has reported that many child car seat owners ignore car seat recalls that they do not view as posing a serious problem or threat. See Transcript, "The 1993 Child Passenger Safety Symposium Public Comment Session On Child Safety Seat Recalls," March 14, 1993.

Fisher-Price also believes that a negative consequence of a remedial action campaign resulting from what it feels is a technical noncompliance, would be a general lack of confidence in child car seats. It feels that there is a danger that parents of young children might discontinue the use of child car seats out of concern that child car seats are not safe, in spite of the fact that all states currently have laws on their books mandating the use of such seats for specified child groups.

Fisher-Price concludes that:

The tests performed by Messrs. Kennedy and Shanley clearly demonstrate that a noncompliance with the requirements of FMVSS 302 as it applies to the molded webbing used in the Fisher-Price car seats is inconsequential as it relates to motor vehicle safety. The empirical data gathered from these tests establish that, to the extent a child occupant of a car seat faces a risk of injury from fire, that risk arises as a result of the clothing the child wears, not from the flammability of the molded webbing material. In addition, the webbing constitutes only an inconsequential percentage (0.019%) of the total combustible material located in the interior of the average motor vehicle and therefore has no impact on the fire safety of a motor vehicle or on the ability of an individual to safely evacuate a burning motor vehicle. Of equal import, research has revealed no reported instance in which the shoulder belt webbing of a child car seat has been the material first ignited in a motor vehicle fire or in which a single child was burned as a result of a fire originating in the shoulder belt webbing of a child car seat.

Interested persons are invited to submit written data, views, and arguments on the petition of Fisher-Price, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials,

and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: December 9, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 3, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93-27525 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-69-M

## Federal Aviation Administration

[Summary Notice No. PE-93-48]

### 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.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, D.C. 20591.

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-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

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, DC, on November 3, 1993.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

Docket No.: 23921

Petitioner: Flight Safety International  
Sections of the FAR Affected: 14 CFR 61.55(b)(2), 61.56(b)(1), 61.57 (c) and (d), 61.58 (c)(1) and (d), 61.63 (c)(2) and (d)(2) and (3), 61.67(d)(2), 61.157(d) (1) and (2) and (e)(1) and (2), 61.191(c) and appendix A

**Description of Relief Sought/Disposition:** To extend and amend Exemption No. 5317 to permit Flight Safety International to continue to offer contract pilot training services to operators of turbojet/turboprop and piston engine powered aircraft and to allow a flight instructor to complete the practical test for an instrument rating to the flight instructor certificate in an approved flight simulator or training device.

Docket No.: 26559

Petitioner: Helicopter Association International

Sections of the FAR Affected: 14 CFR 43.3

**Description of Relief Sought/Disposition:** To permit properly trained pilots who are employed by member operators on HAI and AAMS to exchange Liquid Oxygen containers in company aircraft when certified mechanics are not readily available.

Docket No.: 27270

Petitioner: Mr. Paul P. Tucker  
Sections of the FAR Affected: 14 CFR 121.383(c)

**Description of Relief Sought:** To allow the petitioner to fly in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27431

Petitioner: Mr. R. V. Anderson  
Sections of the FAR Affected: 14 CFR 103.1

**Description of Relief Sought:** To allow the petitioner to operate his two-placed ultralight vehicle as the sole occupant.

Docket No.: 27476

Petitioner: Florida Institute of Technology

Sections of the FAR Affected: 14 CFR part 141, appendixes A, C, D, F, and H

**Description of Relief Sought/Disposition:** To permit the petitioner to train its students to a performance standard in lieu of meeting the minimum flight time requirement.

Docket No.: 27482

Petitioner: Airflite Inc.

Sections of the FAR Affected: 14 CFR 61.57(d)

**Description of Relief Sought:** To allow Airflite's airline transport certificate holders to act as pilot in command (PIC) of tan aircraft carrying passengers at night without having made at least three landings to a full stop during the preceding 90 days in the category and class of aircraft to be used.

Docket No.: 27493

Petitioner: Mr. Charles A. Levine  
Sections of the FAR Affected: 14 CFR 121.383(c)

**Description of Relief Sought:** To allow the petitioner to fly in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27494

Petitioner: Mr. Leon Lipsky  
Sections of the FAR Affected: 14 CFR 121.383(c)

**Description of Relief Sought/Disposition:** To permit the petitioner to fly in part 121 air carrier operations after his 60th birthday.

### Dispositions of Petitions

Docket No.: 25307

Petitioner: Precision Airlines  
Sections of the FAR Affected: 14 CFR 135.429(a), 135.435 and 135.443

**Description of Relief Sought/Disposition:** To extend and amend Exemption No. 4867 to allow the petitioner to use certain foreign original equipment manufacturers and repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certificates to perform preventative maintenance outside the United States on components and parts used on the petitioner's foreign-made aircraft.

*Grant, October 29, 1993, Exemption No. 4867D*

Docket No.: 26012

Petitioner: Federal Express Corporation  
Sections of the FAR Affected: 14 CFR 121.583(a)

**Description of Relief Sought/Disposition:** To extend Exemption No. 5129 to permit Federal Express Corporation to continue to transport medical personnel assigned to Project

Orbis without complying with certain passenger carrying requirements.  
*Grant, October 25, 1993, Exemption No. 5129C*

Docket No.: 26152

Petitioner: Sierra Academy of Aeronautics, Sierra Academy of Aeronautics-Technical Institute  
Sections of the FAR Affected: 14 CFR Part 141, appendix F (C)(III)(a)(2) (i) and (ii)

Description of Relief Sought: To allow the petitioner to graduate students from its approved commercial pilot helicopter training course with 100 hours of flight instruction in helicopters and 50 hours of directed solo training in helicopters.  
*Grant, October 27, 1993, Exemption No. 5245B*

Docket No.: 26482

Petitioner: United Parcel Service  
Sections of the FAR Affected: 14 CFR 121.358

Description of Relief Sought: To extend Exemption No. 5520 to extend the compliance date for the petitioner to retrofit 18 of its DC-8 aircraft with windshear warning and recovery guidance systems from December 30, 1993 to June 30, 1995.

*Grants, October 29, 1993, Exemption No. 5520A*

Docket No.: 27168

Petitioner: Weyerhaeuser  
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought/  
Disposition: To permit the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under part 135.

*Grant, October 27, 1993, Exemption No. 5775*

Docket No.: 27169

Petitioner: Western Helicopters, Inc.  
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under part 135.

*Grant, October 27, 1993, Exemption No. 5776*

Docket No.: 27170

Petitioner: Minuteman Aviation, Inc.  
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under part 135.

*Grant, October 27, 1993, Exemption No. 5777*

Docket No.: 27179

Petitioner: Suncoast Helicopters, Inc.  
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under part 135.

*Grant, October 27, 1993, Exemption No. 5773*

Docket No.: 27193

Petitioner: Rocky Mountain Helicopters, Inc.  
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under part 135.

*Grant, October 27, 1993, Exemption No. 5774*

Docket No.: 27367

Petitioner: Airline Training Consultants, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d)(2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), and (e)(1) and (2); and Appendix A of Part 61.

Description of Relief Sought: To allow the petitioner to use FAA-approved simulators to meet certain training and testing requirements.

*Grant, October 31, 1993, Exemption No. 5772*

Docket No.: 27368

Petitioner: Ponderosa Aviation, Inc.  
Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow the pilots employed by the petitioner to remove and reinstall aircraft seats and stretchers as required for a particular flight.

*Grant, October 29, 1993, Exemption No. 5779*

Docket No.: 27384

Petitioner: The Boeing Company  
Sections of the FAR Affected: 14 CFR 25.1435(b)(1)

Description of Relief Sought: To allow the petitioner to demonstrate compliance by a combination of a test of the complete hydraulic system at its operating pressure (3000 psi), and component testing at 1.5 times operating pressure (4500 psi) per §25.1435(a)(2), and airplane ground and flight testing.

*Partial Grant, October 1, 1993, Exemption No. 5758*

Docket No.: 27432

Petitioner: Dornier Luftfahrt GmbH  
Sections of the FAR Affected: 14 CFR 25.562 (c)(5)

Description of Relief Sought: To allow the petitioner to be exempted from the

Head Injury Criterion for front row passenger seats located behind bulkheads in the Dornier Model 3218 airplanes, until June 30, 1994.

*Partial Grant, October 19, 1993, Exemption No. 5765*

Docket No.: 27483

Petitioner: Trans Continental Airlines  
Sections of the FAR Affected: 14 CFR 121.358(c)(1)

Description of Relief Sought: To allow the petitioner to submit a request for approval of a retrofit schedule after the June 1, 1990, deadline to the Flight Standards Division Manager in the region of the certificate holding district office.

*Grant, October 20, 1993, Exemption No. 5766*

[FR Doc. 93-27526 Filed 11-8-93; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

November 2, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### U.S. Mint

OMB Number: New

Form Number: None

Type of Review: New collection

Title: Bullion Coin Buyers Profile

Description: The data collected will be used to make decisions regarding a change in the design, size, weight and alloy of Eagle gold bullion coins as authorized by Act of Congress, H.R. 3654, SEC. 228. The data will enable the U.S. Mint to make the most advantageous decision regarding these issues.

Respondents: Individuals or households

Estimated Number of Respondents: 40,000

Estimated Burden Hours Per Response:

Screening Questionnaire:

Purchasers: 2 minutes

Non-Purchasers: 1 minute

**Interviews:**

Purchasers: 12 minutes

Non-Purchasers: 10 minutes

*Frequency of Response: One time only*  
*Estimated Total Reporting Burden: 518*  
hours*Clearance Officer: Virginia Trotti, (202)*  
874-6260, United States Mint, Room  
14-1C, 633 3rd Street, NW.,  
Washington, DC 20220.*OMB Reviewer: Milo Sunderhauf, (202)*  
395-6880, Office of Management and  
Budget, Room 3001, New Executive  
Office Building, Washington, DC  
20503.**Lois K. Holland,***Departmental Reports, Management Officer.*

[FR Doc. 93-27524 Filed 11-8-93; 8:45 am]

BILLING CODE 4810-37-P

**UNITED STATES INFORMATION  
AGENCY****U.S. Advisory Commission on Public  
Diplomacy Meeting****AGENCY:** United States Information  
Agency.**ACTION:** Notice for the Federal Register.

The United States Advisory  
Commission on Public Diplomacy will  
meet in room 600, 301 4th Street, SW.,  
on November 10, 1993, from 10 a.m. to  
12 p.m.

The meeting will be closed to the  
public from 11 a.m. to 12 p.m. because  
it will involve discussion of classified  
information relating to U.S.  
international broadcasting policies and

plans with Mr. Joseph Bruns, Acting  
Director, Bureau of Broadcasting, USIA.  
(5 U.S.C. 552b(c)(1)).

From 10:15 a.m. to 11 a.m., the  
Commission will meet in open session  
with Ms. Ann Pincus, Director of USIA's  
Office of Research, to discuss opinion  
and media research in public diplomacy  
and evaluation in U.S. Information  
Agency programs.

Please call Gloria Kalamets, (202)  
619-4468, for further information.

Dated: October 28, 1993.

**Joseph Duffey,***Director.*

[FR Doc. 93-27454 Filed 11-8-93; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register

Vol. 58, No. 215

Tuesday, November 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL HOUSING FINANCE BOARD

**TIME AND DATE:** 5:00 p.m., Tuesday, November 16, 1993.

**PLACE:** 1201 24th Street, NW., Washington, DC 20037.

**STATUS:** This entire meeting will be closed to the public.

### MATTERS TO BE CONSIDERED

**PORTION CLOSED TO THE PUBLIC:** The Board will consider the following:

Discussion of Full-Time Board Issues

The above matter is eligible for consideration in closed session pursuant to the exemption in section 552b(c)(9)(B) of title 5 of the United States Code.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

**Philip L. Conover,**  
*Managing Director.*

[FR Doc. 93-27728 Filed 11-5-93; 2:15 pm]

**BILLING CODE 6725-01-P**

## FEDERAL HOUSING FINANCE BOARD

**TIME AND DATE:** 9:00 a.m., Wednesday, November 17, 1993.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

### MATTERS TO BE CONSIDERED

**PORTIONS OPEN TO THE PUBLIC:** The Board will consider the following:

1. FHLBank System Reports
  - A. Monthly Financial Report
  - B. Monthly Membership Report
  - C. Third Quarter AHP Report
2. Membership Guidelines
3. FHLBank of San Francisco Proposal to Lend to a Nonmember Mortgagee
4. System 2000 Implementation: Goal #5 Update
5. Affordable Housing Program (AHP) Regulation

**PORTIONS CLOSED TO THE PUBLIC:** The Board will consider the following:

1. Approval of the October Board Minutes
2. Update on Proposed Revision to the Financial Management Policy
3. Examination and Regulatory Oversight Division Matters
  - A. 1994 Strategic Plan for Examinations of the Federal Home Loan Banks
  - B. Third Quarter Examination Update and Progress Report
4. FHLBank Presidents' Compensation Plan—1994 salary ranges, grade designations and merit increase guidelines
5. Board Management Issues

The above matters are eligible for consideration in closed session pursuant to one or more of the provisions of section 552b(c) (6), (8) and (9) (A) and (B) of title 5 of the United States Code.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

**Philip L. Conover,**  
*Managing Director.*

[FR Doc. 93-27729 Filed 11-5-93; 2:15 pm]

**BILLING CODE 6725-01-P**

## NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

**TIME AND DATE:** 9:30 a.m., Monday, November 15, 1993.

**PLACE:** Board Room, 7th Floor, room 7047, 1775 Duke Street, Alexandria, Virginia 22314-3428.

**STATUS:** Open.

### BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Report on Pilot Program for Community Development Credit Unions.
3. Insurance Fund Report.

### MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposal to Change NCUA's Fiscal Year and NCUSIF Insurance Year to Calendar Year.
3. Fiscal Year 1994 Operating Fee Scale.

**RECESS:** 10:45 a.m.

**TIME AND DATE:** 11:00 a.m., Monday, November 15, 1993.

**PLACE:** Board Room, 7th Floor, room 7047, 1775 Duke Street, Alexandria, Virginia 22314-3428.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Request from a Federal Credit Union for a Community Field of Membership Expansion. Closed pursuant to exemption (8).
3. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), (9)(B), and (10).
4. Personnel Policies and Action. Closed pursuant to exemptions (2), (6), and (9)(B).

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (703) 518-6300.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 93-27730 Filed 11-5-93; 2:15 pm]

**BILLING CODE 7535-01-M**

## NATIONAL TRANSPORTATION SAFETY BOARD

**TIME AND DATE:** 9:30 a.m., Tuesday, November 16, 1993.

**PLACE:** The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The first two items are open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

### MATTERS TO BE CONSIDERED:

6201

Aviation Accident Report: Loss of Propeller Blade and Subsequent Crash Involving State of South Dakota MU-2B-60, Zwingle, Iowa, April 19, 1993.

5991A

Marine Accident Report: Collision of U.S. Towboat FREMONT and Tow with the St. Vincent and the Grenadines Registered Containership JURA] DALMATINAC, Houston Ship Channel, Galveston Bay, December 21, 1992.

6155

Opinion and Order: *Administrator v. Schmidt, et al*, Dockets SE-11577, 11569, and 11581; disposition of respondents' appeal.

**NEWS MEDIA CONTACT:** Telephone (202) 382-0660.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382-6525.

Dated: November 5, 1993.

**Ray Smith,**

*Alternate Federal Register Liaison Officer.*

[FR Doc. 93-27727 Filed 11-5-93; 8:45 am]

**BILLING CODE 7533-01-M**

# **Federal Register**

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**Tuesday  
November 9, 1993**

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**Part II**

**Office of  
Management and  
Budget**

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**Budget Rescissions and Deferrals; Notice**

## OFFICE OF MANAGEMENT AND BUDGET

### Special Message on Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report 37 proposed rescissions of budget authority, totaling \$1.9 billion.

These proposed rescissions affect programs of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, State, and Transportation, International Security Assistance programs, and programs of the Agency for International Development, the Army Corps of Engineers, the General Services Administration, the Small Business Administration, the State Justice Institute, and the United States Information Agency. The details of these proposed rescissions are set forth in the attached letter from the Director of the Office of Management and Budget and in the accompanying report.

Concurrent with these proposals, I am transmitting to the Congress FY 1994 supplemental appropriations language requests that would remove a variety of restrictions that impede effective functioning of the government, including certain proposals outlined in the recommendations of the National Performance Review.

Together, the supplemental language requests and the rescission proposals would result in a total budget authority reduction of \$2.0 billion. My

Administration is committed to working closely with the Congress to produce legislation that will achieve this level of savings.

**William J. Clinton,**

The White House,  
November 1, 1993.

Memorandum for the President

From: Leon E. Panetta

Subject: Second Special Message on Proposed Rescissions and Deferrals for FY 1994 and Supplemental Language Proposals

October 30, 1993.

On August 5, 1993, during House consideration of the Reconciliation Bill, the House leadership and the Administration agreed that the White House would initiate a spending reduction bill in the Fall in order to reduce spending and implement the recommendations of the National Performance Review (NPR). The attached packages of proposals, in conjunction with the Government Reform and Savings Act, which you transmitted to the Congress on October 26, 1993, follows through on that agreement.

The savings proposed in the Government Reform and Savings Act are \$9.1 billion in specific "savings" plus \$22 billion in procurement reforms.

The savings that would result from enactment of the rescission and supplemental proposals included in the attached packages total \$2.0 billion. Of this amount, \$339 million is related to NPR recommendations. The combination of the \$9.1 billion plus this \$2 billion assures scored savings of at least \$10 billion dollars over five years.

*Second Special Message on Proposed Rescissions and Deferrals for FY 1994*

Attached for your consideration is the second special message on proposed

rescissions and deferrals for FY 1994, to be transmitted to the Congress in accordance with the Congressional Budget and Impoundment Control Act of 1974. This special message contains 37 proposed rescissions totaling \$1.9 billion in budget authority.

These proposed rescissions affect programs of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, State, and Transportation, International Security Assistance programs and programs of the Agency for International Development, the Army Corps of Engineers, the General Services Administration, the Small Business Administration, the State Justice Institute, and the United States Information Agency.

The enactment of the proposed rescissions would reduce FY 1995 outlays by \$650.6 million and FY 1995 through FY 1999 outlays by \$1.5 billion.

#### *Supplemental Language Proposals*

A package of supplemental language proposals is attached for your approval. It includes proposed language changes to provisions included in various appropriations acts. These proposals and those included in the Government Reform and Savings Act would, if enacted, remove a variety of impediments to the implementation of your proposals to cut red tape, improve customer service, empower employees to get results, and cut programs back to basics.

#### *Recommendation*

The affected agencies have reviewed these proposed rescissions and language changes. I recommend that the special message and the proposed language changes be transmitted to the Congress.

Attachments

BILLING CODE 3110-01-M



**CONTENTS OF SPECIAL MESSAGE**

(in thousands of dollars)

<b>RESCISSION NO.</b>	<b>ITEM</b>	<b>BUDGET AUTHORITY</b>
	<b>Funds Appropriated to the President:</b>	
	<b>International Security Assistance:</b>	
R94-1	Foreign military financing grants.....	40,000
R94-2	Economic support fund.....	90,000
	<b>Agency for International Development:</b>	
R94-3	Development assistance fund.....	160,000
	<b>Department of Agriculture:</b>	
	<b>Agricultural Research Service:</b>	
R94-4	Agricultural research service.....	16,233
R94-5	Buildings and facilities.....	8,460
	<b>Cooperative State Research Service:</b>	
R94-6	Cooperative State Research Service.....	30,002
R94-7	Building and facilities.....	34,000
	<b>Agricultural Stabilization and Conservation Service:</b>	
R94-8	Salaries and expenses.....	12,167
	<b>Soil Conservation Service:</b>	
R94-9	Conservation operations.....	12,167
	<b>Farmers Home Administration:</b>	
R94-10	Salaries and expenses.....	12,167
	<b>Rural Electrification Administration:</b>	
R94-11	Rural Electrification and telephone loans loans program account.....	6,445
	<b>Food and Nutrition Service:</b>	
R94-12	Commodity supplemental food program.....	12,600
	<b>Department of Commerce:</b>	
	<b>National Oceanic and Atmospheric Administration:</b>	
R94-13	Operations, research and facilities.....	6,000
R94-14	Construction.....	4,000

**CONTENTS OF SPECIAL MESSAGE**

(in thousands of dollars)

<b>RESCISSION NO.</b>	<b>ITEM</b>	<b>BUDGET AUTHORITY</b>
R94-15	International Trade Administration: Operations and administration.....	2,000
<b>Department of Defense:</b>		
<b>Military Construction:</b>		
R94-16	Military construction, Army.....	116,134
R94-17	Military construction, Air Force.....	85,094
R94-18	Military construction, Army Reserve.....	19,807
R94-19	Military construction, Naval Reserve.....	4,438
R94-20	Military construction, Air Force Reserve.....	18,759
R94-21	Military construction, Army National Guard.....	251,854
R94-22	Military construction, Air National Guard.....	105,138
<b>Department of the Army-Civil:</b>		
<b>Army Corps of Engineers:</b>		
R94-23	General investigations.....	24,970
R94-24	Construction, general.....	97,319
<b>Department of Energy:</b>		
<b>Energy Programs:</b>		
R94-25	Energy supply, research and development activities, and Uranium supply and enrichment activities.....	139,300
<b>Department of Housing and Urban Development:</b>		
<b>Housing Programs:</b>		
R94-26	Annual contributions for assisted housing.....	180,000
<b>Department of the Interior:</b>		
<b>Bureau of Reclamation:</b>		
R94-27	Construction program.....	16,000
<b>Department of State:</b>		
<b>Administration of Foreign Affairs:</b>		
R94-28	Salaries and expenses.....	600

**CONTENTS OF SPECIAL MESSAGE**  
(in thousands of dollars)

<b>RESCISSION NO.</b>	<b>ITEM</b>	<b>BUDGET AUTHORITY</b>
	<b>Department of Transportation:</b>	
	<b>Federal Aviation Administration:</b>	
R94-29	Operations.....	2,750
R94-30	Facilities and equipment.....	40,257
	<b>Federal Transit Administration:</b>	
R94-31	Discretionary grants.....	52,037
	<b>Federal Highway Administration:</b>	
R94-32	Highway demonstration projects.....	187,827
	<b>General Services Administration:</b>	
	<b>Public Buildings Service:</b>	
R94-33	Federal buildings fund.....	126,022
	<b>Small Business Administration:</b>	
R94-34	Salaries and expenses.....	13,100
	<b>Other Independent Agencies:</b>	
	<b>State Justice Institute:</b>	
R94-35	Salaries and expenses.....	6,775
	<b>United States Information Agency:</b>	
R94-36	Salaries and expenses.....	3,000
R94-37	North/South center.....	8,700
	<b>Total, rescissions.....</b>	<b>1,946,122</b>

R94-1

## FUNDS APPROPRIATED TO THE PRESIDENT

## INTERNATIONAL SECURITY ASSISTANCE

## Foreign military financing grants

Of the funds made available (including earmarked funds) under this heading in

Public Law 102-391 and prior appropriations acts, \$40,000,000 are rescinded.

## Rescission Proposal No. R94-1

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Funds Appropriated to the President	New budget authority..... \$ <u>3,149,279,000</u> (P.L. 103-87)
<b>BUREAU:</b> International Security Assistance	Other budgetary resources.. \$ _____
<b>Appropriation Title and Symbol:</b>  Foreign military financing grants 1141082	Total budgetary resources... \$ <u>3,149,279,000</u>
	Amount proposed for rescission..... \$ <u>40,000,000</u>
<b>OMB Identification code:</b>  11-1082-0-1-152	<b>Legal authority (in addition to sec. 1012):</b>
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account provides grant funds to finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. It also provides funds for the costs of administering the military assistance program. The Administration proposes to streamline the foreign assistance program, including the termination of outmoded and ineffective activities. The estimated budgetary savings are proposed for rescission and will be derived from unexpended balances of prior year appropriations.

**ESTIMATED PROGRAM EFFECT:** This proposal would reduce assistance programs in certain recipient countries by rescinding amounts from unexpended balances.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
3,552,752	3,549,752	-3,000	-12,000	-18,000	-5,000	-2,000	—

R94-2

## FUNDS APPROPRIATED TO THE PRESIDENT

## INTERNATIONAL SECURITY ASSISTANCE

## Economic support fund

Of the unexpended or unobligated balances of funds (including earmarked funds) made available for fiscal years 1987 through 1994 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, \$90,000,000 are rescinded.

Rescission Proposal No. R94-2

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Funds Appropriated to the President	New budget authority..... \$ <u>2,364,562,000</u> (P.L. 103-87)
<b>BUREAU:</b> International Security Assistance	Other budgetary resources.. \$ <u>403,985,043</u>
<b>Appropriation Title and Symbol:</b>  Economic support fund 11X1037 114/51037 113/41037	Total budgetary resources... \$ <u>2,768,547,043</u>
<b>OMB identification code:</b>  11-1037-0-1-152	Amount proposed for rescission..... \$ <u>90,000,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: September 30, 1994 September 30, 1995 (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the Economic support fund, which provides economic assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. Consistent with the Vice President's National Performance Review proposal, the Administration is streamlining foreign assistance programs, including the termination of outmoded and ineffective activities. The estimated savings are proposed for rescission and will be derived from unexpended balances of prior year appropriations.

**ESTIMATED PROGRAM EFFECT:** This rescission proposal would reduce assistance programs in certain recipient countries.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
2,923,391	2,900,891	-22,500	-25,200	-16,020	-10,170	-6,480	—

R94-3

FUNDS APPROPRIATED TO THE PRESIDENT  
INTERNATIONAL DEVELOPMENT ASSISTANCE  
AGENCY FOR INTERNATIONAL DEVELOPMENT

Development assistance

Of the unexpended or unobligated balances (including earmarked funds) made available for fiscal year 1994 and prior fiscal years to carry out the provisions of sections 103 through 106 of the Foreign Assistance Act of 1961, \$160,000,000 are rescinded.



## Rescission Proposal No. R94-3

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Funds Appropriated to the President	<b>New budget authority.....</b> \$ <u>1,223,500,000</u> (P.L. 103-87)
<b>BUREAU:</b> Agency for International Development	<b>Other budgetary resources..</b> \$ <u>60,373,000</u>
	<b>Total budgetary resources...</b> \$ <u>1,283,873,000</u>
Development assistance fund 11X1021 114/51021	<b>Amount proposed for rescission.....</b> \$ <u>160,000,000</u>
<b>OMB identification code:</b>  11-1021-0-1-151	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1995</u> (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the Development assistance fund. Consistent with the Vice President's National Performance Review proposal, the Administration is streamlining foreign assistance programs, including the termination of outmoded and ineffective activities. The estimated savings are proposed for rescission and will be derived from unexpended balances of prior year appropriations.

**ESTIMATED PROGRAM EFFECT:** This rescission proposal would reduce assistance programs in certain recipient countries.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,338,472	1,325,672	-12,800	-88,000	-32,000	-12,800	-6,400	-3,200

R94-4

DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESEARCH SERVICE

Of the funds made available under this heading in Public Law 103-111,  
\$16,233,000 are rescinded.

Rescission Proposal No. R94-4

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-504**

<b>AGENCY:</b> Department of Agriculture	<b>New budget authority.....</b> \$ <u>694,969,000</u>
<b>BUREAU:</b> Agricultural Research Service	(P.L. 103-111) <b>Other budgetary resources..</b> \$ <u>0</u>
<b>Appropriation title and symbol:</b>  Agricultural research service  1241400	<b>Total budgetary resources...</b> \$ <u>694,969,000</u>
	<b>Amount proposed for rescission.....</b> \$ <u>16,233,000</u>
<b>OMB identification code:</b>  12-1400-0-1-352	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____

**JUSTIFICATION:** The Agricultural Research Service (ARS) is the Department of Agriculture's "in-house" research agency. This rescission would eliminate lower-priority research projects, such as those for which alternative sources of funding are available from State or local governments, industry, or others. Adequate funding would remain to enable ARS scientists to perform high-priority, nationwide research in areas such as natural resource protection, food quality and safety, and improved agricultural production practices (including sustainable agriculture methods).

**ESTIMATED PROGRAM EFFECT:** There would be no effect on high-priority research projects; adequate resources would remain to fund those projects.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
673,714	660,890	-12,824	-3,409	--	--	--	--

R94-5

DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESEARCH SERVICE

Buildings and facilities

Of the funds made available under this heading in Public Law 103-111,

\$8,460,000 are rescinded.

## Rescission Proposal No. R94-5

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Agriculture	New budget authority..... \$ <u>32,743,000</u>
<b>BUREAU:</b> Agricultural Research Service	(P.L. 103-111) Other budgetary resources.. \$ <u>0</u>
<b>Appropriation title and symbol:</b>  Buildings and facilities  12X1401	Total budgetary resources... \$ <u>32,743,000</u>
	Amount proposed for rescission..... \$ <u>8,460,000</u>
<b>OMB identification code:</b>  12-1401-0-1-352	<b>Legal authority (in addition to sec. 1012):</b>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The Agricultural Research Service (ARS) Buildings and Facilities account is used to finance construction, renovation, and major repairs at the agency's Federal research facilities across the nation. This proposal would rescind funds and congressional earmarks directing resources to be used for specific new construction. The remaining resources would be used to finance renovation projects at the agency's regional research centers and address serious environmental and safety defects at other ARS facilities. Many of the agency's existing facilities are almost 50 years old, and are in need of major renovations in order to allow the agency to do state-of-the-art research and for the facilities to meet State and local environmental and safety codes. New construction of research facilities is often not needed because sufficient space is available at existing laboratories to house agency personnel if these labs are renovated.

**ESTIMATED PROGRAM EFFECT:** The program effect of this change would be minimal. New ARS construction projects are often not necessary, and the remaining funding would be targeted to the highest priority projects.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
26,202	24,933	-1,269	-4,230	-1,269	-1,692	---	---

**DEPARTMENT OF AGRICULTURE****COOPERATIVE STATE RESEARCH SERVICE**

Of the funds made available under this heading in Public Law 103-111, \$30,002,000 are rescinded, including \$20,213,000 for contracts and grants for agricultural research under the Act of August 4, 1965, as amended; and \$9,789,000 for necessary expenses of Cooperative State Research Service activities.

Rescission Proposal No. R94-6

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Agriculture	New budget authority..... \$ <u>453,736,000</u> (P.L. 103-111)
<b>BUREAU:</b> Cooperative State Research Service	
<b>Appropriation title and symbol:</b>  Cooperative state research service 1241500 12X1500	Other budgetary resources.. \$ <u>0</u>  Total budgetary resources... \$ <u>453,736,000</u>
<b>OMB identification code:</b>  12-1500-0-1-352	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____
	Amount proposed for rescission..... \$ <u>30,002,000</u>

**JUSTIFICATION:** The Cooperative State Research Service (CSRS) administers grants and payments to State institutions to supplement State and local funding for agricultural research. This proposal would eliminate funding for lower-priority earmarked research grants. These grants were not peer-reviewed or competitively-awarded, and are largely targeted to address local, rather than regional or national, needs. Sufficient funding would remain available to continue the highest-priority projects as determined by the Administrator of the CSRS. Also, funding would be available through the National Research Initiative competitive grants program for meritorious projects focusing on basic research addressing regional or national needs.

**ESTIMATED PROGRAM EFFECT:** The effect of this rescission would be minimal because alternative sources of funding are available.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
449,661	446,661	-3,000	-9,001	-9,001	-6,000	-3,000	—

R94-7

DEPARTMENT OF AGRICULTURE  
COOPERATIVE STATE RESEARCH SERVICE

Buildings and facilities

Of the funds made available under this heading in Public Law 103-111,

\$34,000,000 are rescinded.



Rescission Proposal No. R94-7

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
 Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> Department of Agriculture	<b>New budget authority.....</b> \$ <u>58,874,000</u> (P.L. 103-111) <b>Other budgetary resources..</b> \$ <u>0</u>
<b>BUREAU:</b> Cooperative State Research Service	
<b>Appropriation title and symbol:</b>  Buildings and facilities  12X1501	<b>Total budgetary resources...</b> \$ <u>58,874,000</u>  <b>Amount proposed for rescission.....</b> \$ <u>34,000,000</u>
<b>OMB identification code:</b>  12-1501-0-1-352	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____

**JUSTIFICATION:** The Cooperative State Research Service (CSRS) makes grants to States and other eligible recipients for the acquisition of land, construction, and repair of facilities and equipment to carry out agricultural research and extension activities. This proposal would rescind funds for construction of lower-priority research facilities congressionally earmarked for particular States and universities. The funds were not awarded competitively or peer-reviewed, and most projects are for local, not national, priorities. The remaining FY 1994 funds would be allocated to the highest national priority projects, as determined by the Administrator of CSRS, with special emphasis on projects that can be completed in FY 1994.

**ESTIMATED PROGRAM EFFECT:** There would be minimal nationwide effect. Agribusinesses, States, and local governments would have to increase their support for local or State projects they would like to see completed.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
53,516	51,816	-1,700	-3,400	-10,200	-11,900	-6,800	—

R94-8

## DEPARTMENT OF AGRICULTURE

## AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

## Salaries and expenses

Of the funds made available under this heading in Public Law 103-111,

\$12,167,000 are rescinded.

Rescission Proposal No. R94-8

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Agriculture	<b>New budget authority.....</b> \$ <u>730,842,000</u> (P.L. 103-111)
<b>BUREAU:</b> Agricultural Stabilization and Conservation Service	<b>Other budgetary resources..</b> \$ <u>78,076,000</u>
<b>Appropriation title and symbol:</b>  Salaries and expenses  1243300	<b>Total budgetary resources...</b> \$ <u>808,918,000</u>
	<b>Amount proposed for rescission.....</b> \$ <u>12,167,000</u>
<b>OMB identification code:</b>  12-3300-0-1-351	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account funds the salaries and expenses of the Agricultural Stabilization and Conservation Service (ASCS), which provides agricultural producers with crop price- and income-support payments. The rescission reflects the savings in ASCS Salaries and expenses of implementing the National Performance Review (NPR) proposal to reorganize USDA. The Secretary of Agriculture plans to reorganize USDA and streamline its operations both in the field and at the Headquarters level. Under the NPR/USDA proposal, ASCS field offices would merge with parts of the Farmers Home Administration to form the new Farm Service Agency. This would result in significant personnel and administrative cost efficiencies.

**ESTIMATED PROGRAM EFFECT:** None

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
735,970	724,478	-11,492	-487	-189	—	—	—

R94-9

## DEPARTMENT OF AGRICULTURE

## SOIL CONSERVATION SERVICE

## Conservation operations

Of the funds made available under this heading in Public Law 103-111,

\$12,167,000 are rescinded.

Rescission Proposal No. R94-9

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY</b> USDA Department of Agriculture	New budget authority..... \$ <u>591,049,000</u> (P.L. 103-111)
<b>BUREAU:</b> Soil Conservation Service	Other budgetary resources.. \$ <u>60,000,000</u>
<b>Appropriation title and symbol:</b>  Conservation operations  12X1000	Total budgetary resources... \$ <u>651,049,000</u>
<b>OMB identification code:</b>  12-1000-0-1-302	Amount proposed for rescission..... \$ <u>12,167,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account funds the salaries and expenses of the county office employees of the Soil Conservation Service (SCS). The rescission reflects the savings in SCS Conservation operations of implementing the NPR proposal to reorganize USDA. The Secretary of Agriculture plans to reorganize USDA and streamline its operations both in the field and at the Headquarters level. This proposal would result in more efficient service delivery to SCS clients, significant personnel reductions, and administrative cost efficiencies.

**ESTIMATED PROGRAM EFFECT:** None

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
586,575	575,868	-10,707	-1,217	-243	—	—	—

R94-10

DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

Salaries and expenses

Of the funds made available under this heading in Public Law 103-111,

\$12,167,000 are rescinded.

Rescission Proposal No. R94-10

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Agriculture	New budget authority..... \$ <u>36,152,000</u> (P.L. 103-111) Other budgetary resources.. \$ <u>0</u> Total budgetary resources... \$ <u>36,152,000</u>
<b>BUREAU:</b> Farmers Home Administration	
<b>Appropriation title and symbol:</b>  Salaries and expenses  1242001	Amount proposed for rescission..... \$ <u>12,167,000</u>
<b>OMB identification code:</b>  12-2001-0-1-452	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account funds Farmers Home Administration (FmHA) salaries and expenses. The rescission reflects the savings in FmHA Salaries and expenses of implementing the NPR proposal to reorganize USDA. The Secretary of Agriculture plans to reorganize USDA and streamline its operations both in the field and at the Headquarters level. Under the USDA plan, FmHA would be merged into three new entities: the Farm Service Agency, the Rural Utilities Service, and the Rural Community Development Service. This proposal would result in more efficient service delivery to FmHA clients, significant personnel reductions, and administrative cost efficiencies.

**ESTIMATED PROGRAM EFFECT:** None

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
43,206	32,012	-11,194	-608	-365	—	—	—

**DEPARTMENT OF AGRICULTURE****RURAL ELECTRIFICATION ADMINISTRATION**

Rural electrification and telephone loans program account

Of the funds made available under this heading in Public Law 103-111 for the cost of 5 percent rural telephone loans, \$6,445,000 are rescinded.



Rescission Proposal No. R94-11

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Agriculture	<b>New budget authority.....</b> \$ <u>112,398,000</u> (P.L. 103-111)
<b>BUREAU:</b> Rural Electrification Administration	<b>Other budgetary resources..</b> \$ <u>0</u>
<b>Appropriation title and symbol:</b>  Rural electrification and telephone loans program account 12X1230	<b>Total budgetary resources...</b> \$ <u>112,398,000</u>
<b>OMB identification code:</b>  12-1230-0-1-271	<b>Amount proposed for rescission.....</b> \$ <u>6,445,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account receives appropriations for subsidy budget authority to make Rural Electrification Administration (REA) electric and telephone loans to eligible borrowers serving rural areas. The rescission would reduce telephone "hardship" loans (5 percent interest rate) by \$50 million (\$6.4 million in credit subsidy). Historically, REA telephone hardship loans have totaled 30 percent of total REA electric and telephone hardship loan amounts provided. The FY 1994 appropriation increases the telephone loans' share to 44 percent. The rescission would return telephone hardship funding to its historical proportion.

**ESTIMATED PROGRAM EFFECT:** Reduction in REA hardship telephone loan levels would be from \$100 million to \$50 million. The remaining amount would be sufficient to finance borrowing needs of telephone hardship borrowers. Most REA telephone borrowers are capable of affording higher interest rates without significantly affecting their subscribers' rates.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
134,302	133,980	-322	-1,225	-1,289	-902	-645	-1,031

R94-12

**DEPARTMENT OF AGRICULTURE****FOOD AND NUTRITION SERVICE****Commodity supplemental food program**

Of the funds made available under this heading in Public Law 102-341,

\$12,600,000 are rescinded.

Rescission Proposal No. R94-12

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Agriculture	New budget authority..... \$ <u>104,500,000</u> (P.L. 103-111)
<b>BUREAU:</b> Food and Nutrition Service	
<b>Appropriation title and symbol:</b>  Commodity supplemental food program  123/43512	Other budgetary resources.. \$ <u>12,600,000</u>  Total budgetary resources... \$ <u>117,100,000</u>
<b>OMB identification code:</b>  12-3512-0-1-605	Amount proposed for rescission..... \$ <u>12,600,000</u>
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1994</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the Commodities Supplemental Food Program. In FY 1992, the private storage facility in which the Food and Nutrition Service (FNS) stores many of its commodities had a fire. In early FY 1993, FNS estimated the cost of commodities that would need to be replaced. By the end of FY 1993, FNS had discovered that they had been able to restore and use more of the damaged commodities than anticipated. Consequently, more FY 1993 funds were available than were needed. These funds were carried over into FY 1994 and are proposed for rescission. The FY 1994 appropriation is sufficient to expand program participation as directed by the Congress without these carryover funds.

**ESTIMATED PROGRAM EFFECT:** No program effect is anticipated as the rescission affects appropriated amounts that are in excess of current needs.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
104,080	92,009	-12,071	-529	---	---	---	---

## DEPARTMENT OF COMMERCE

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

## Operations, research, and facilities

Of the funds made available (including earmarked funds) under this heading in

Public Law 103-121, \$6,000,000 are rescinded.

Rescission Proposal No. R94-13

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Commerce	New budget authority..... \$ <u>1,751,053,000</u> (P.L. 103-121)
<b>BUREAU:</b> National Oceanic and Atmospheric Administration	
<b>Appropriation title and symbol:</b>  Operations, research and facilities  13X1450	Other budgetary resources.. \$ <u>532,729,408</u>  Total budgetary resources... \$ <u>2,283,782,408</u>
<b>OMB identification code:</b>  13-1450-0-1-306	Amount proposed for rescission..... \$ <u>6,000,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the general operations of National Oceanic and Atmospheric Administration (NOAA). This proposal rescinds funds not needed to provide for programs, projects, and activities that failed to meet one or more of the following criteria: competitively awarded; authorized in law; meet established Federal grant selection and award procedures; do not duplicate on-going efforts; original objectives have not been completed; and the objectives are consistent with the statutory responsibilities of NOAA. The funds remaining in the account will be allocated consistent with program criteria.

**ESTIMATED PROGRAM EFFECT:** The ability of NOAA to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (In thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,682,754	1,679,274	-3,480	-1,680	-420	-420	—	—

**DEPARTMENT OF COMMERCE****NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION****Construction**

Of the funds made available (including earmarked funds) under this heading in Public Law 103-121, \$4,000,000 are rescinded.

## Rescission Proposal No. R94-14

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Commerce	New budget authority..... \$ <u>109,703,000</u> (P.L. 103-121)
<b>BUREAU:</b> National Oceanic and Atmospheric Administration	Other budgetary resources.. \$ <u>37,504,000</u>
<b>Appropriation title and symbol:</b>  Construction 13X1452	Total budgetary resources... \$ <u>147,207,000</u>
<b>OMB identification code:</b> 13-1452-0-1-306	Amount proposed for rescission..... \$ <u>4,000,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the construction, repair, modification, and construction of new facilities, and land acquisition. This proposal rescinds funds not needed to provide for programs, projects, and activities that failed to meet one or more of the following criteria: competitively awarded; authorized in law; meet established Federal grant selection and award procedures; do not duplicate on-going efforts; original objectives have not been completed; and the objectives are consistent with the statutory responsibilities of NOAA. The funds remaining in the account will be allocated consistent with program criteria.

**ESTIMATED PROGRAM EFFECT:** The ability of NOAA to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
83,633	82,993	-640	-2,480	-880	--	--	--

DEPARTMENT OF COMMERCE  
INTERNATIONAL TRADE ADMINISTRATION

Operations and administration

Of the funds made available (including earmarked funds) under this heading in

Public Law 103-121, \$2,000,000 are rescinded.



Rescission Proposal No. R94-15

**PROPOSED RESCISSION OF BUDGET AUTHORITY**

Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> Department of Commerce	New budget authority..... \$ <u>248,590,000</u> (P.L. 103- 121)
<b>BUREAU:</b> International Trade Administration	Other budgetary resources.. \$ <u>37,108,000</u>
<b>Appropriation title and symbol:</b>  Operations and administration  1341250	Total budgetary resources... \$ <u>285,698,000</u>
<b>OMB identification code:</b>  13-1250-0-1-376	Amount proposed for rescission..... \$ <u>2,000,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the activities of the International Trade Administration (ITA) in the Department of Commerce that are intended to develop the export potential of U.S. firms. This proposal rescinds funds not needed for programs, projects, and activities that failed to meet one or more of the following criteria: competitively awarded; authorized in law; meet established Federal grant selection and award procedures; do not duplicate on-going efforts; original objectives have not been completed; and the objectives are consistent with the statutory responsibilities of ITA. The funds remaining in the account will be allocated consistent with program criteria.

**ESTIMATED PROGRAM EFFECT:** The ability of ITA to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
234,521	233,111	-1,410	-394	-196	—	—	—

R94-16

## DEPARTMENT OF DEFENSE

## MILITARY CONSTRUCTION

Military construction, Army

Of the funds made available under this heading in Public Law 103-110,  
\$116,134,000 are rescinded.

Rescission Proposal No. R94-16

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Defense	<b>New budget authority.....</b> \$ <u>906,676,000</u>
<b>BUREAU:</b> Military Construction	<b>(P.L. 103-110)</b>
<b>Appropriation title and symbol:</b> Military construction, Army	<b>Other budgetary resources..</b> \$ <u>472,130,000</u>
214/82050.	<b>Total budgetary resources...</b> \$ <u>1,378,806,000</u>
<b>OMB identification code:</b> 21-2050-0-1-051	<b>Amount proposed for rescission.....</b> \$ <u>116,134,000</u>
<b>Grant program:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b> <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b> <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b> <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Army to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
786,610	763,383	-23,227	-51,099	-24,388	-6,968	-5,807	-1,742

R94-17

## DEPARTMENT OF DEFENSE

## MILITARY CONSTRUCTION

## Military construction, Air Force

Of the funds made available under this heading in Public Law 103-110,

\$85,094,000 are rescinded.

Rescission Proposal No. R94-17

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
 Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> Department of Defense	<b>New budget authority.....</b> \$ <u>1,021,567,000</u> (P.L. 103-110)
<b>BUREAU:</b> Military Construction	<b>Other budgetary resources..</b> \$ <u>841,954,000</u>
<b>Appropriation title and symbol:</b>  Military construction, Air Force 574/83300	<b>Total budgetary resources...</b> \$ <u>1,863,521,000</u>
<b>OMB Identification code:</b> 57-3300-0-1-051	<b>Amount proposed for rescission.....</b> \$ <u>85,094,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Air Force to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,083,034	1,071,972	-11,062	-36,590	-22,124	-9,786	-3,404	-936

R94-18

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Army Reserve

Of the funds made available under this heading in Public Law 103-110,

\$19,807,000 are rescinded.

## Rescission Proposal No. R94-18

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Defense	New budget authority.....	\$	<u>102,040,000</u>
<b>BUREAU:</b> Military Construction	(P.L. 103-110) Other budgetary resources..	\$	<u>110,402,000</u>
<b>Appropriation title and symbol:</b>  Military construction, Army Reserve  214/82086	Total budgetary resources...	\$	<u>212,442,000</u>
<b>OMB identification code:</b>  21-2086-0-1-051	Amount proposed for rescission.....	\$	<u>19,807,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____		
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____		

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Army Reserve to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
85,867	84,481	-1,386	-11,092	-3,961	-1,783	-891	-257

R94-19

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Naval Reserve

Of the funds made available under this heading in Public Law 103-110,

\$4,438,000 are rescinded.



## Rescission Proposal No. R94-19

## PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> Department of Defense	New budget authority.....	\$	<u>25,029,000</u>
<b>BUREAU:</b> Military Construction	(P.L. 103-110) Other budgetary resources..	\$	<u>54,383,000</u>
<b>Appropriation title and symbol:</b>  Military construction, Naval Reserve  174/81235	Total budgetary resources...	\$	<u>79,412,000</u>
<b>OMB identification code:</b>  17-1235-0-1-051	Amount proposed for rescission.....	\$	<u>4,438,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____		
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____		

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Naval Reserve to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
53,456	53,145	-311	-2,485	-888	-399	-200	-58

R94-20

## DEPARTMENT OF DEFENSE

## MILITARY CONSTRUCTION

Military construction, Air Force Reserve

Of the funds made available under this heading in Public Law 103-110,

\$18,759,000 are rescinded.

## Rescission Proposal No. R94-20

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Defense	New budget authority..... (P.L. 103-110)	\$	<u>74,486,000</u>
<b>BUREAU:</b> Military Construction	Other budgetary resources..	\$	<u>38,024,000</u>
<b>Appropriation title and symbol:</b>  Military construction, Air Force Reserve  574/83730	Total budgetary resources...	\$	<u>112,510,000</u>
<b>OMB Identification code:</b>  57-3730-0-1-051	<b>Legal authority (in addition to sec. 1012):</b>		
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____		
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____		

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Air Force Reserve to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
48,528	47,215	-1,313	-10,505	-3,752	-1,688	-844	-244

R94-21

## DEPARTMENT OF DEFENSE

## MILITARY CONSTRUCTION

Military construction, Army National Guard

Of the funds made available under this heading in Public Law 103-110,

\$251,854,000 are rescinded.

Rescission Proposal No. R94-21

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Defense	New budget authority..... \$ <u>302,719,000</u> (P.L. 103-110)
<b>BUREAU:</b> Military Construction	Other budgetary resources.. \$ <u>153,606,000</u>
<b>Appropriation title and symbol:</b>  Military construction, Army National Guard  214/82085	Total budgetary resources... \$ <u>456,325,000</u>
<b>OMB identification code:</b>  21-2085-0-1-051	Amount proposed for rescission..... \$ <u>251,854,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Army National Guard to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
277,214	268,399	-8,815	-115,853	-80,593	-27,704	-11,333	-3,778

R94-22

**DEPARTMENT OF DEFENSE****MILITARY CONSTRUCTION****Military Construction, Air National Guard**

Of the funds made available under this heading in Public Law 103-110,

\$105,138,000 are rescinded.

Rescission Proposal No. R94-22

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Defense	New budget authority..... \$ <u>247,491,000</u> (P.L. 103-110)
<b>BUREAU:</b> Military Construction	Other budgetary resources... \$ <u>146,446,000</u>
<b>Appropriation title and symbol:</b>  Military construction, Air National Guard	Total budgetary resources... \$ <u>393,937,000</u>
574/83830	Amount proposed for rescission..... \$ <u>105,138,000</u>
<b>OMB identification code:</b> 57-3830-0-1-051	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1998</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The funds proposed for rescission were appropriated in excess of the amount requested for this account in the FY 1994 Budget. In general, unrequested funds cannot be used before FY 1995 because the projects have not yet been designed. This proposal would reduce the Federal deficit without affecting existing construction projects or reducing current construction employment.

**ESTIMATED PROGRAM EFFECT:** The ability of the Air National Guard to accomplish its mission would not be affected by this proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
289,441	281,030	-8,411	-56,775	-27,336	-7,360	-2,418	-1,472

R94-23

## DEPARTMENT OF DEFENSE -- CIVIL

## DEPARTMENT OF THE ARMY ·

## CORPS OF ENGINEERS -- CIVIL

## General investigations

Of the funds made available (including earmarked funds) under this heading in H.R. 2445, as signed by the President on October 28, 1993, \$24,970,000 are rescinded.



Rescission Proposal No. R94-23

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
 Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> Department of the Army - Civil	New budget authority..... \$ <u>207,540,000</u>
<b>BUREAU:</b> Army Corps of Engineers	(P.L. #03- ) Other budgetary resources.. \$ <u>50,000,000</u>
<b>Appropriation title and symbol:</b>  General Investigations  96X3121	Total budgetary resources... \$ <u>257,540,000</u>
	Amount proposed for rescission..... \$ <u>24,970,000</u>
<b>OMB identification code:</b>  96-3121-0-1-301	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account provides for Army Corps of Engineers collection and study of basic information pertaining to river and harbor, flood control, shore protection, and related projects; restudy of authorized projects; miscellaneous investigations; and, when authorized by law, surveys and detailed studies and plans and specifications of projects prior to construction.

The Army Corps of Engineers would select and prioritize studies and projects for funding from those included in the 1994 Energy and Water Development Appropriations Act and Congressional Conference Report based on the following criteria: (1) continuation of ongoing work under contract; (2) economic justification and/or environmental benefits commensurate with costs; (3) environmental acceptability; (4) compliance with standard cost sharing; (5) availability of necessary non-Federal sponsorship and funding; (6) consideration of whether the project or study represents Federal assumption of a traditionally non-Federal responsibility; and (7) completion of normal Executive Branch project review requirements. Studies and projects that could not be accommodated within the appropriated amount less the rescission amount would not be funded.

**ESTIMATED PROGRAM EFFECT:** Studies and projects meeting the Army Corps of Engineers criteria would receive Federal funding, within available funds, in FY 1994. There would be minimal impact on such studies and projects. Those studies and projects not meeting the criteria would be delayed unless undertaken by non-Federal sources.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
193,581	178,599	-14,982	-9,988	—	—	—	—

R94-24

## DEPARTMENT OF DEFENSE -- CIVIL

## DEPARTMENT OF THE ARMY

## CORPS OF ENGINEERS -- CIVIL

## Construction, general

Of the funds made available (including earmarked funds) under this heading in H.R. 2445, as signed by the President on October 28, 1993, \$97,319,000 are rescinded.

Rescission Proposal No. R94-24

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of the Army - Civil	<b>New budget authority.....</b> \$ <u>1,400,875,000</u> (P.L. 103- )
<b>BUREAU:</b> Army Corps of Engineers	<b>Other budgetary resources..</b> \$ <u>1,275,000,000</u>
<b>Appropriations title and symbol:</b>  Construction, general  96X3122	<b>Total budgetary resources...</b> \$ <u>2,675,875,000</u>
<b>OMB identification code:</b>  96-3122-0-1-301	<b>Amount proposed for rescission.....</b> \$ <u>97,319,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account provides for Army Corps of Engineers river and harbor, flood control, shore protection, and related projects authorized by laws.

The Army Corps of Engineers would select and prioritize projects for funding from those included in the 1994 Energy and Water Development Appropriations Act and Congressional Conference Report based on the following criteria: (1) continuation of ongoing work under contract; (2) economic justification and/or environmental benefits commensurate with costs; (3) environmental acceptability; (4) compliance with standard cost sharing; (5) availability of necessary non-Federal sponsorship and funding; (6) consideration of whether the project or study represents Federal assumption of a traditionally non-Federal responsibility; and (7) completion of normal Executive Branch project review requirements. Projects that could not be accommodated within the appropriated amount less the rescission amount would not be funded.

**ESTIMATED PROGRAM EFFECT:** Projects meeting the Army Corps of Engineers criteria would receive Federal funding, within available resources, in FY 1994. There would be minimal impact on such projects. Those projects not meeting the criteria would be delayed unless undertaken by non-Federal sources.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,392,085	1,338,560	-53,525	-43,794	—	—	—	—

**DEPARTMENT OF ENERGY****Energy supply research and development activities**

Of the funds made available under this heading in Public Law 102-377,  
\$42,000,000 are rescinded.

Of the funds made available under this heading in H.R. 2445, as signed by the  
President on October 28, 1993, \$97,300,000 are rescinded.

Rescission Proposal No. R94-25

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Energy	New budget authority..... \$ <u>3,401,002,000</u> (P.L. 103- )
<b>BUREAU:</b> Energy Programs	Other budgetary resources.. \$ <u>478,570,000</u>
<b>Appropriation title and symbol:</b>  Energy supply, research and development activities, and Uranium supply and enrichment activities 89X0224 89X0226	Total budgetary resources... \$ <u>3,879,572,000</u>
<b>OMB identification code:</b> 89-0226-0-1-271 89-0224-0-1-271	<b>Amount proposed for rescission.....</b> \$ <u>139,300,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The Energy supply account provides funds for operating expenses, capital equipment, and construction projects associated with research and development of various energy technologies. The purpose of energy supply research and development activities is to develop new energy technologies and improve existing energy technologies. This rescission proposal would eliminate unnecessary nuclear research and development. The proposed budgetary rescission is \$139.3 million. Of this amount, \$12 million is for research and development activities on the High-temperature Gas-cooled Reactor. Another \$85 million was to be used for the design and/or the continued operation of unneeded nuclear reactors. Shutdown costs for these reactors can be covered by the unobligated balances in this account. Of the remaining amount, \$42 million in budget authority would be rescinded as a result of curtailing the Atomic Vapor Laser Isotope Separation Project, from prior year balances in the Uranium supply and enrichment activities account, remaining with the Department of Energy due to its agreement with the U.S. Enrichment Corporation.

**ESTIMATED PROGRAM EFFECT:** The Department's ability to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
3,382,416	3,296,626	-85,790	-38,920	-14,590	—	—	—

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****HOUSING PROGRAMS****Annual contributions for assisted housing**

Of the funds made available under this heading in Public Law 103-124, \$180,000,000 are rescinded, including \$130,000,000 for modernization of existing public housing projects pursuant to section 14 of the United States Housing Act (42 U.S.C. 1437); and \$50,000,000 for the lead-based paint hazard reduction program as authorized under sections 1011 and 1053 of the Residential Lead-Based Hazard Reduction Act of 1992.

Rescission Proposal No. R94-26

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Housing and Urban Development	New budget authority..... (P.L. 103-124)	\$	<u>9,312,900,000</u>
<b>BUREAU:</b> Housing Programs	Other budgetary resources..	\$	<u>2,000,000,000</u>
<b>Appropriation title and symbol:</b>  Annual contributions for assisted housing  86X0164	Total budgetary resources...	\$	<u>11,312,900,000</u>
<b>OMB identification code:</b>  86-0164-0-1-604	Amount proposed for rescission.....	\$	<u>180,000,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____		
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____		

**JUSTIFICATION:** This account funds a variety of rental assistance programs. Some of the programs that would be affected by this rescission proposal are listed below:

1. Modernization of public housing program. The Administration is proposing to rescind the \$130 million in additional funds added by the Congress in FY 1994. The existing backlog of \$9 billion in unspent funds is sufficient for immediate needs and should be utilized before more funds are made available.
2. Lead-based paint hazard reduction program. The Administration is proposing to rescind the \$50 million in additional funds added by Congress in FY 1994. This level of funding is more consistent with the current availability of people trained and certified to perform inspection, reduction, and abatement work.

**ESTIMATED PROGRAM EFFECT:** HUD's ability to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
14,334,744	14,329,744	-5,000	-30,500	-46,880	-35,220	-20,800	-20,800

R94-27

## DEPARTMENT OF THE INTERIOR

## BUREAU OF RECLAMATION

## Construction program

Of the funds made available under this heading in H.R. 2445, as signed by the President on October 28, 1993, \$16,000,000 are rescinded.



Rescission Proposal No. R94-27

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
 Report Pursuant to Section 1102 of P.L. 93-344

<b>AGENCY:</b> Department of the Interior	<b>New budget authority.....</b> \$ <u>464,423,000</u> (P.L. 103-xxx)
<b>BUREAU:</b> Bureau of Reclamation	<b>Other budgetary resources..</b> \$ <u>280,283,000</u>
<b>Appropriations title and symbol:</b>  Construction program 14X0684 14X4081 14X4079	<b>Total budgetary resources...</b> \$ <u>744,706,000</u>
<b>OMB identification code:</b> 14-4079-0-1-301 14-4081-0-1-301 14-0684-0-1-301	<b>Amount proposed for rescission.....</b> \$ <u>16,000,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The Construction program account funds the water resources development program of the Bureau of Reclamation. Funding under this program also provides for transfers to the Lower Colorado River Basin Development fund and the Upper Colorado River Basin fund for water resources development.

The proposal would rescind \$16,000,000 from projects included in the FY 1994 Energy and Water Development Appropriations Act. The Department of the Interior would select and prioritize projects for funding based on criteria developed by the Department. These criteria would include consideration of: (1) continuation of ongoing work under contract; (2) new projects or activities consistent with the Secretary's priorities; (3) projects with environmental benefits commensurate with costs; and (4) the availability of necessary non-Federal cost sharing. Projects that could not be accommodated within the appropriated amount less the rescission amount would not be funded.

**ESTIMATED PROGRAM EFFECT:** Projects meeting the criteria would, within available resources, receive Federal funding in FY 1994. Other projects would be delayed unless financing was provided by non-Federal sources.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
470,207	456,767	-13,440	-2,560	—	—	—	—

## DEPARTMENT OF STATE

## ADMINISTRATION OF FOREIGN AFFAIRS

## Diplomatic and consular programs

Of the funds made available under this heading in Public Law 103-121,

\$600,000 are rescinded.

Rescission Proposal No. R94-28

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of State	New budget authority..... \$ <u>2,101,311,000</u> (P.L. 103-121) Other budgetary resources.. \$ <u>26,778,000</u> Total budgetary resources... \$ <u>2,128,089,000</u>
<b>BUREAU:</b> Administration of Foreign Affairs	
<b>Appropriation title and symbol:</b>  Salaries and expenses and Diplomatic and consular programs 1940113	Amount proposed for rescission..... \$ <u>600,000</u>
<b>OMB identification code:</b>  19-0113-0-1-153	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** The Diplomatic and consular programs and the Salaries and expenses accounts fund overseas expenses of the Department of State. This rescission proposal reflects estimated savings to be achieved through the implementation of the Vice President's National Performance Review proposal to reduce the costs of providing Marine guards and other security at diplomatic missions overseas.

**ESTIMATED PROGRAM EFFECT:** No program effect is anticipated.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
2,103,826	2,103,226	-600	---	---	---	---	---

R94-29

DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

Operations

Of the funds made available (including earmarked funds) under this heading in

Public Law 103-122, \$2,750,000 are rescinded.

Rescission Proposal No. R94-29

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Transportation	New budget authority..... \$ <u>2,286,018,000</u> (P.L. 103-122)
<b>BUREAU:</b> Federal Aviation Administration	Other budgetary resources.. \$ <u>2,358,116,433</u>
<b>Appropriation title and symbol:</b>  Operations  6941301	Total budgetary resources... \$ <u>4,642,134,433</u>
<b>OMB identification code:</b>  69-1301-0-1-402	Amount proposed for rescission..... \$ <u>2,750,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority. <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds an annual grant (\$2 million) to the Mid-American Aviation Resource Consortium (MARC) in order to subsidize a private air traffic controller training program. Currently, five schools operate such programs. Only MARC receives a Federal subsidy. Subsidy to MARC is not required for the program to continue on a self-financing basis.

Funds for grants to vocational technical institutions to support aircraft maintenance training programs (\$750 thousand) are not needed. There are numerous privately funded, self-supporting training programs that are more than adequate to meet industry's needs.

The proposed rescission is consistent with the Vice President's National Performance Review proposal.

**ESTIMATED PROGRAM EFFECT:** This proposed rescission would not affect the Federal Aviation Administration's ability to accomplish its mission.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
2,278,451	2,276,031	-2,420	-330	—	—	—	—

R94-30

**DEPARTMENT OF TRANSPORTATION****FEDERAL AVIATION ADMINISTRATION****Facilities and equipment**

Of the available balances (including earmarked funds) under this heading,

\$40,257,111 are rescinded.

## Rescission Proposal No. R94-30

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Transportation	New budget authority..... \$ <u>2,301,700,000</u> (P.L. 103-122)
<b>BUREAU:</b> Federal Aviation Administration	
<b>Appropriation title and symbol:</b>  Facilities and equipment  69X8107	Other budgetary resources.. \$ <u>2,151,842,075</u>  Total budgetary resources... \$ <u>4,453,542,075</u>
<b>OMB identification code:</b>  69-8107-0-7-402	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____

**JUSTIFICATION:** The proposed rescission amounts are from unobligated balances associated with the Airway Sciences program. This program has achieved its goal of establishing high-quality aviation curricula in universities and post-secondary schools. The proposed rescission is consistent with the Vice President's National Performance Review proposal.

**ESTIMATED PROGRAM EFFECT:** The proposed rescission would not affect the Federal Aviation Administration's ability to accomplish its mission.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
2,047,981	2,039,930	-8,051	-9,662	-8,051	-4,428	-3,623	-3,623

**DEPARTMENT OF TRANSPORTATION****FEDERAL TRANSIT ADMINISTRATION****Discretionary grants**

Any unobligated balances of funds made available for fiscal year 1991 and any earlier fiscal year under section 3 of the Federal Transit Act, as amended (49 U.S.C. App 1602), and allocated to specific projects for the replacement, rehabilitation, and purchase of buses and related equipment, for construction of bus-related facilities, and for new fixed guideway systems are rescinded.



## Rescission Proposal No. R94-31

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Transportation	New budget authority..... \$ <u>1,785,000,000</u> (P.L. 102-240)
<b>BUREAU:</b> Federal Transit Administration	Other budgetary resources.. \$ <u>1,550,100,000</u>
<b>Appropriation title and symbol:</b>  Discretionary grants  69X8191	Total budgetary resources... \$ <u>3,335,100,000</u>
<b>OMB identification code:</b>  69-8191-0-7-401	Amount proposed for rescission..... \$ <u>52,037,325</u>
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input type="checkbox"/> Appropriation <input checked="" type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation account funds capital grants to States and local governments for the construction and improvement of transit systems, facilities and equipment, and the purchase of rolling stock needed for such systems. This proposed rescission is consistent with the Vice President's National Performance Review proposal. This proposal would rescind all transit new start and bus earmarks that are at least three years old (i.e., FY 1991 and prior year earmarks), but have not yet been obligated. Projects that are at least three years behind schedule should have to be reconsidered for funding by Congress to determine if the projects are still needed and if factors leading to earmarking of the projects in the first place are still valid.

**ESTIMATED PROGRAM EFFECT:** This proposed rescission would not affect the Federal Transit Administration's ability to accomplish its mission.

**OUTLAY EFFECT:** (In thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,470,632	1,469,591	-1,041	-5,204	-10,407	-10,407	-10,407	-10,407

R94-32

DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

Of the funds made available for highway projects that are not under construction, and that were funded pursuant to an appropriations act and that at no time have been separately authorized, \$187,827,288 are rescinded; Provided, That this rescission shall not apply to any emergency relief project funded under section 125 of title 23, United States Code; Provided further, That the term not under construction refers to a project for which a construction contract for physical construction has not been awarded by the State, local government, or other contracting authority having responsibility for the project, regardless of whether other obligations such as preliminary engineering or environmental studies have been incurred.

Rescission Proposal No. R94-32

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Department of Transportation	<b>New budget authority.....</b> \$ <u>156,362,000</u> (P.L. 103-122)
<b>BUREAU:</b> Federal Highway Administration	<b>Other budgetary resources..</b> \$ <u>916,378,100</u>
<b>Appropriations title and symbol:</b>  Highway demonstration projects 69X9972 69X9911	<b>Total budgetary resources...</b> \$ <u>1,072,740,100</u>
<b>OMB identification code:</b> 69-9972-0-7-401 69-9911-0-1-401	<b>Amount proposed for rescission.....</b> \$ <u>187,827,288</u>
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This proposal would rescind all unobligated balances for unauthorized highway demonstration projects that are not under construction. Such highway projects should compete for funds through the normal allocation and planning processes within the Federal-Aid Highways grants program. For purposes of this proposal, all projects that have been authorized, regardless of whether an authorization has expired or has been exceeded, shall be considered authorized and are not proposed for rescission.

In its reports, GAO has found project completion costs will greatly exceed authorized Federal and State contributions, and that State officials are uncertain where they will find more funding. No Federal provisions allow for canceling or redirecting funds, nor can the States redirect demonstration funds to other transportation projects. The recommendations of the Vice President's National Performance Review incorporate the concept of rescission of these funds, among others.

**ESTIMATED PROGRAM EFFECT:** If the States choose to pursue these projects, the projects must compete for funding at the State level for available State and Federal highway funding allocations.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
340,133	327,611	-12,522	-32,556	-47,583	-42,574	-27,548	-15,026

R94-33

## GENERAL SERVICES ADMINISTRATION

## Federal buildings fund

Of the funds made available from earmarked funds under this heading in Public

Law 103-123, \$126,022,000 are rescinded and are not available in fiscal year 1994.

Rescission Proposal No. R94-33

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> General Services Administration	New budget authority.....	\$	<u>0</u>
<b>BUREAU:</b> Public Buildings Service	Other budgetary resources..	\$	<u>8,965,927,574</u>
<b>Appropriation title and symbol:</b>  Federal buildings fund  47X4542	Total budgetary resources...	\$	<u>8,965,927,574</u>
<b>OMB identification code:</b>  47-4542-5-4-804	Amount proposed for rescission.....	\$	<u>126,022,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____		
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____		

**JUSTIFICATION:** The Federal buildings fund finances the activities of the Public Buildings Service, which provides space and services for Federal agencies in a relationship similar to that of landlord and tenant. The proposed rescission would reduce funding to a level consistent with the budget. The Administrator of the General Services Administration would reduce new obligational authority by program, project, and activity to be consistent with the President's policies, including providing space associated with reduced Federal employment, putting customers first, and cutting back to basics.

**ESTIMATED PROGRAM EFFECT:** This proposed rescission would not affect the General Services Administration's ability to accomplish its mission.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
655,526	661,101	5,575	-26,383	-48,024	-48,850	-8,540	—

R94-34

**SMALL BUSINESS ADMINISTRATION****Salaries and expenses**

Of the funds made available under this heading in Public Law 103-121,

\$13,100,000 are rescinded.

Rescission Proposal No. R94-34

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> Small Business Administration	New budget authority..... \$ <u>258,900,000</u> (P.L. 103-121) Other budgetary resources.. \$ _____ Total budgetary resources... \$ <u>258,900,000</u>
<b>BUREAU:</b>	
<b>Appropriation title and symbol:</b> Salaries and expenses 7340100	Amount proposed for rescission..... \$ <u>13,100,000</u>
<b>OMB identification code:</b> 28-0100-0-1-376	<b>Legal authority (in addition to sec. 1012):</b> <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Grant program:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b> <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b> <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This account funds the Salaries and expenses of the Small Business Administration (SBA). The proposal would rescind grants not awarded competitively, not authorized, and not part of SBA's overall mission.

**ESTIMATED PROGRAM EFFECT:** SBA's ability to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
257,330	246,916	-10,415	-2,685	—	—	—	—

R94-35

STATE JUSTICE INSTITUTE

Salaries and expenses

Of the funds made available under this heading in Public Law 103-121,

\$6,775,000 are rescinded.



Rescission Proposal No. R94-35

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
 Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> State Justice Institute	<b>New budget authority.....</b> \$ <u>13,550,000</u> (P.L. 103-121)
<b>BUREAU:</b>	<b>Other budgetary resources..</b> \$ <u>0</u>
<b>Appropriation title and symbol:</b> Salaries and expenses 4840052	<b>Total budgetary resources...</b> \$ <u>13,550,000</u>
<b>OMB identification code:</b> 48-0052-0-1-752	<b>Amount proposed for rescission.....</b> \$ <u>6,775,000</u>
<b>Grant program:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b> <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b> <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b> <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the State Justice Institute (SJI). SJI was established by the Congress in 1984 as a private, non-profit corporation, to make grants and undertake other activities relating to administration of justice in the United States. The rescission would reduce available funding for a program that does not serve a clear Federal purpose. This would terminate Federal funding of the Institute in the second half of FY 1994.

**ESTIMATED PROGRAM EFFECT:** Other programs, including those of the Department of Justice, serve similar purposes.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
15,051	13,222	-1,829	-4,742	-203	—	—	—

R94-36

## UNITED STATES INFORMATION AGENCY

## Salaries and expenses

Of the funds made available under this heading in Public Law 103-121,  
\$3,000,000 are rescinded.

Rescission Proposal No. R94-36

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1012 of P.L. 93-344**

<b>AGENCY:</b> United States Information Agency	New budget authority..... \$ <u>730,000,000</u> (P.L. 103-121) Other budgetary resources.. \$ <u>5,890,400</u> Total budgetary resources... \$ <u>735,890,400</u>
<b>BUREAU:</b>	
<b>Appropriation title and symbol:</b>  Salaries and expenses  6740201	Amount proposed for rescission..... \$ <u>3,000,000</u>
<b>OMB Identification code:</b>  67-0201-0-1-154	<b>Legal authority (in addition to sec. 1012):</b> <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input type="checkbox"/> No-Year	<b>Type of budget authority:</b> <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the United States Information Agency (USIA). The USIA conducts the international informational, educational, cultural, and exchange programs of the United States and advises the President, the National Security Council, and the Secretary of State on these matters. The Agency defines, explains, and advocates U.S. policies abroad and seeks to increase knowledge among foreign audiences of U.S. society and its values.

Consistent with recommendations of the Vice President's National Performance Review, the USIA will begin to restructure its organization and field structure and to reinvent its public diplomacy activities. Beginning in FY 1994, the Agency operations will be streamlined. The rescission proposal is an estimate of the initial savings that can be realized in FY 1994.

**ESTIMATED PROGRAM EFFECT:** The organizational restructuring and revised approaches to its public diplomacy activities will permit USIA to accomplish its mission at a reduced cost.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
731,506	728,986	-2,520	-450	-30	---	---	---

R94-37

## UNITED STATES INFORMATION AGENCY

## North/South Center

Of the funds made available under this heading in Public Law 103-121,

\$8,700,000 are rescinded.

Rescission Proposal No. R94-37

**PROPOSED RESCISSION OF BUDGET AUTHORITY**  
 Report Pursuant to Section 1012 of P.L. 93-344

<b>AGENCY:</b> United States Information Agency	New budget authority..... \$ <u>8,700,000</u> (P.L. 103-121) Other budgetary resources.. 0
<b>BUREAU:</b>	
<b>Appropriation title and symbol:</b>  North/South Center  6740203	Total budgetary resources... \$ <u>8,700,000</u>
	Amount proposed for rescission..... \$ <u>8,700,000</u>
<b>OMB identification code:</b> 67-0203-0-1-154	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input checked="checked" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Type of account or fund:</b>  <input checked="checked" type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="checked" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation funds the North/South Center for Cultural and Technical Interchange between North America and Central and South America. The Center is a national educational institution administered on behalf of the United States Information Agency by a public, non-profit educational institution in Florida under a grant from the Agency. The programs conducted by the Center are low-priority within the context of the foreign policy objectives of the United States. The rescission proposal would eliminate Federal funding in FY 1994.

**ESTIMATED PROGRAM EFFECT:** Funds made available under the FY 1993 grant agreement that have not yet been drawn down would continue to be available until expended.

**OUTLAY EFFECT:** (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
8,700	4,611	-4,089	-4,611	---	---	---	---



# Federal Register

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Tuesday  
November 9, 1993

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## Part III

# Environmental Protection Agency

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40 CFR Parts 266 and 271

Burning of Hazardous Waste in Boilers  
and Industrial Furnaces; Interim Final  
Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 266 and 271**

[FRL-4792-7]

**Burning of Hazardous Waste in Boilers and Industrial Furnaces**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

**SUMMARY:** On February 21, 1991, EPA promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) that would expand controls on hazardous waste combustion to regulate the burning of hazardous waste in boilers and industrial furnaces (BIFs). Among other things, the regulations provide two tests for determining whether residues derived from Bevill devices (e.g., cement kilns, light-weight aggregate kilns, primary smelters, coal-fired boilers) co-processing hazardous waste and raw materials are exempt from hazardous waste control: if levels of the toxic constituents in the waste-derived residue are not significantly higher than in normal residue; or if levels of the toxic constituents in the waste-derived residue do not exceed specified health-based levels. EPA is today announcing an interim final rule on the health-based limits for nonmetals that are used to determine whether Bevill residues are exempt from the definition of hazardous waste under test number 2, provided that other limits are met on an interim basis (in order to prevent a situation where nonmetal constituents in these residues go unmonitored). The effect of this rule is to replace the current limits needed to qualify for the Bevill exemption (under test number 2) with the land disposal restriction limits for underlying constituents in nonwastewaters pending further administrative action to establish health-based levels.

**EFFECTIVE DATE:** October 15, 1993.

**ADDRESSES:** The official record for this document is identified as Docket Number F-93-BBAS-FFFFF, and is located in the RCRA Information Center located at: EPA/RCRA Information Center, room M2616, 401 M Street SW., Washington, DC 20460.

The RCRA Information Center is open from 9 a.m. to 4 p.m. Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials. Call (202) 260-9327 for appointments. Copies cost \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at: (800) 424-9346 (toll free) or (703) 920-9810.

For technical information concerning this notice, contact Shiva Garg, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8459.

**SUPPLEMENTARY INFORMATION:** The contents of today's notice are listed in the following outline:

- I. Overview of Agency Action
- II. Background
- III. Inaccuracy of the Existing Limits
- IV. Basis for Using Land Disposal Restriction Standards as Interim Limits
  - A. LDR Limits
  - B. Consideration of Using TC Limits
  - C. Which Hazardous Constituents are Affected
- V. Implementation of the Revised Limits
  - A. Default Value is Stayed
  - B. Procedures for Handling Nondetects
  - C. Analytical Methods
  - D. Immediate Effective Date
- VI. State Authority
  - A. Applicability of Rules in Authorized States
  - B. Effect on State Authorization
- VII. Paperwork Reduction Act

**I. Overview of Agency Action**

On January 22, 1993, the Cement Kiln Recycling Coalition (CKRC) submitted a petition to EPA to modify § 266.112 of the Boiler and Industrial Furnace (BIF) Rule to amend the health-based limits for nonmetal constituents in waste-derived residues that must be met in order to qualify for the Bevill exemption (under the test in § 266.112(b)(2)). The Agency agrees that the nonmetal limits established in appendix VII, part 266, are extremely conservative to the point that they replicate an unrealistic scenario. The values, moreover, were based on unintended, mistaken assumptions on EPA's part. Therefore, the Agency is today staying those limits provided that owners and operators of such Bevill devices comply with land disposal restriction standards for the hazardous constituents that are reasonably expected to be present in these residues. The Agency believes that these technology-based land disposal restriction limits identify residues that have the "low toxicity" attribute that is one of the key bases for the temporary exemption of Bevill residues from the definition of hazardous waste. 56 FR 7197 (Feb. 21, 1991); *Environmental Defense Fund v. EPA*, 852 F.2d 1316, 1329 (D.C. Cir. 1988), cert. denied, 489 U.S. 1011 (1989). Thus, the limits serve as interim regulatory levels. Nonetheless, EPA views these land disposal restriction limits as a

temporary measure pending future rulemaking to consider whether more appropriate health-based limits should be established.

This stay does not affect the application of procedural requirements of § 266.112(b)(2), except that the following provisions of paragraph (b)(2)(i) are also stayed: (1) The default limit of 0.002 micrograms per kilogram; and (2) the procedure for handling nondetect values. Under the conditioned stay, a default value does not apply given that EPA has established detectable limits for virtually every hazardous constituent for which analytical methods are readily available. Further, detection limits under the stay will be handled as they are for compliance with the land disposal restrictions. As provided by § 268.43(c)(3), the Agency considers that the limit for an organic constituent has been met if the facility used a combustion process to treat the waste, and has been unable to detect the constituent despite using its best efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are developed, the facility may demonstrate best efforts by achieving detection limits for the constituent that do not exceed the limit by an order of magnitude.

EPA is making this stay immediately effective. The Agency is taking this action after making a good-faith effort to provide advance notice and opportunity for comment on the conditioned stay. The Agency provided notice and requested comment from the approximately 80 commenters on the Bevill provision of the BIF rule during the previous rulemaking process.<sup>1</sup> EPA received comments from 16 respondents representing regulated BIFs and associated organizations, and from the incineration industry (e.g., the National Waste Management Association and the Hazardous Waste Treatment Council). These comments are addressed in this document.

**II. Background**

Under § 266.112 of the BIF rule, EPA codified procedures for owners and operators of Bevill devices (e.g., cement kilns, light-weight aggregate kilns, coal-fired boilers, and primary smelters) to determine whether their residues retain the Bevill exemption when the facilities co-fire or co-process hazardous wastes along with fossil fuels or normal raw materials. See 56 FR 7196-7200

<sup>1</sup> Letter from Matthew Straus, Director, Waste Management Division, EPA, to Commenters on Proposed Bevill Provisions of the BIF Rule, dated March 24, 1993.



(February 21, 1991). Those procedures implement the principle that, if burning hazardous waste does not affect the character of the residue (i.e., the residue would be essentially the same whether or not hazardous wastes were burned or co-processed), the waste-derived residue retains the Bevill exemption. The procedures require facilities that claim the Bevill exemption when burning listed hazardous waste to conduct sampling and analysis of their residues to document that either: (1) Levels of toxic constituents in waste-derived residue are not significantly higher than in normal (i.e., when not burning hazardous waste) residues; or (2) levels of toxic constituents in waste-derived residue do not exceed health-based levels specified in the rule. If the residue passes either test, the Bevill exemption is retained.

The rule requires sampling and analysis as often as necessary to characterize the residue, provided that the compositing period does not exceed 24 hours. For example, if a facility analyzes its residue less frequently than daily, the sample analyzed cannot represent residue that has been generated during a period exceeding 24 hours.

The constituents that must be analyzed for are: (1) Appendix VIII, part 261, hazardous constituents that could reasonably be expected to be in the hazardous waste burned; and (2) compounds that the Agency has determined are common products of incomplete combustion (i.e., they may be formed during combustion of the waste) and has listed in appendix VIII, part 266.

### III. Inaccuracy of the Existing Limits

The health-based limits (HBLs) for nonmetals established in appendix VII, part 266, are based on the total concentration of the nonmetal in the residue, not an extract concentration. This is because combustion processes should destroy nonmetal compounds, and limits on the total concentration of the compound in the residue would better ensure effective destruction. The health-based limits on the total concentration of toxic compounds address exposure via ingestion of the residue.

To establish the HBLs for nonmetals, the Agency converted drinking water limits (i.e., maximum concentration limits (MCLs), and limits based on reference doses (RfDs) for noncarcinogens and unit risk values for carcinogens assuming the exposed individual drank two liters of water per day for a lifetime) to total concentrations simply by

mathematically converting the milligram per liter drinking water limits to milligram per kilogram units. In the rush to promulgate the BIF rules under a stringent court-ordered deadline, the Agency failed to note that this approach continues to assume that the hypothetical exposed individual is ingesting two liters (two kilograms) per day of the media—that is, two kilograms or 4.4 pounds of residue. Clearly, this was not the Agency's intent. In previous risk assessments, the Agency has often assumed that an individual ingests 0.2 grams of soil per day. If a residue ingestion rate of 0.2 grams per day was assumed, then the appendix VII, part 266, nonmetal limits may be orders of magnitude too stringent.

What is certain is that the existing regulatory values are mistaken. The Agency thus believes that the nonmetal health-based limits must be corrected immediately.

CKRC also petitioned to alter the HBL value for thallium, likewise arguing that the regulatory value is inappropriately low (stringent) due to improper conversion of values and initial misclassification of thallium as a nonmetal. EPA is not acting on this part of the petition. Since the rule was promulgated, EPA has new health information on thallium that indicates that the RfD for this hazardous constituent is significantly lower than originally determined. Based on these new data, the Agency's Office of Drinking Water (after notice and comment rulemaking) has lowered the maximum concentration limit (MCL) for thallium to 0.002 mg/l. See 57 FR 31776 (July 17, 1992). Based on this new information, if anything, the existing regulatory value is not stringent enough, given that the Bevill limits were based on applying a 100 fold dilution factor to the MCLs. See 56 FR 7199. The Agency thus is not staying that value, and may issue guidance to permit writers regarding the possible use of omnibus permit authority to include thallium values in the § 266.112 demonstration that reflect the most recent health information.

### IV. Basis for Using Land Disposal Restriction Standards as Interim Limits

This section discusses the basis for selecting the land disposal restriction (LDR) limits for the underlying hazardous constituents in nonwastewaters as interim limits as well as the rationale for not selecting an alternative approach based on drinking water limits times a dilution and attenuation factor (DAF). (It should be noted that the LDR limits established in today's stay are based on total

concentrations in the residue; the alternative of establishing limits based on drinking water limits times a DAF would apply to the Toxicity Characteristic Leachate Procedure (TCLP) extract.)

#### A. LDR Limits

The Agency has established land disposal treatment standards for the underlying hazardous constituents in FO39 (multisource leachate) that are essentially a compilation of all earlier treatment standards and include virtually every RCRA hazardous constituent that can be routinely analyzed by gas chromatography/mass spectrometry (GC/MS).<sup>2</sup> The Agency believes that these limits are achievable for most RCRA hazardous wastes. See generally 58 FR 29867 (May 24, 1993) for an explanation of why EPA believes these treatment standards are achievable for most hazardous wastes.

The Agency believes that it is reasonable to exempt Bevill residues at these LDR levels on an interim basis (pending rulemaking to establish more appropriate limits) because: (1) Technology-based treatment limits should identify residues that have the "low toxicity" property that is one of the bases for the temporary exclusion of Bevill residues from the definition of hazardous waste; (2) they are promulgated limits and so have been scrutinized and subject to public comment in previous rulemakings, most notably the Third Third rule (55 FR 22619-625 (June 1, 1990)), the August 18, 1992, rule applying these standards to a wider group of prohibited wastes (57 FR 37203-206), and the May 24, 1993, interim final rule applying the standard to certain ignitable and corrosive hazardous wastes;<sup>3</sup> (3) the limits have been established for virtually every hazardous constituent that can be routinely analyzed by GC/MS; and (4) they should be readily achievable.

The majority of commenters to the March 24, 1993, letter agreed that these LDR limits were acceptable as interim limits pending rulemaking to establish more appropriate limits. Several commenters, however, expressed concern that exempting Bevill residues

<sup>2</sup> Commenters expressed concern that the list of appendix VIII, part 261, constituents is more comprehensive than the list of FO39 compounds. As a practical matter, this is a moot point because there are no analytical procedures for many of the compounds on appendix VIII, and others cannot be analyzed using readily available equipment (i.e., GC/MS).

<sup>3</sup> Entitled, "Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Standards Were Vacated; Interim Final Rule."

at LDR levels may not be protective given that the LDR levels are technology-based, not health-based. Commenters also noted that the LDRs apply to waste that may remain subject to subtitle C management, rather than wastes excluded from Subtitle C regulation. We share commenters' concerns but note the LDR levels are interim limits (pending rulemaking to establish health-based levels), and we believe that they are sufficiently protective. The LDRs should ensure that nonmetals are largely destroyed because they are based on concentration levels achieved by applying best demonstrated available treatment technology. No commenter maintained that wastes containing these levels of organics would not satisfy the low hazard Bevell test with respect to nonmetal constituents. Moreover, in most cases, these LDR standards for nonmetals are based on the level of detection in combustion residues. Even if the health-based level for a compound were to be lower than the LDR, it may not have practical significance if the LDR is the limit of detection in the residue matrix.

Other commenters suggested that there is no emergency situation and that the Agency should develop appropriate health-based limits through rulemaking. Some commenters noted that, if the existing limits could not be met, facilities still had the option of documenting that the levels of toxic constituents in waste-derived residue were no higher than in normal (i.e., generated without burning hazardous waste) residue under § 266.112(b)(1). EPA believes that these limits are not reasonable (i.e., are so conservative that they replicate an unrealistic scenario), and that the option provided by paragraph (b)(1) in any case may not be practicable. In particular, we have learned since promulgation of the rule that it is often difficult to establish and re-establish concentration levels in normal residue as raw materials or operating conditions change that can affect the levels of hazardous constituents in the residue. This is because devices such as cement kilns must be operated for extensive periods of time (e.g., hours or days) to reach steady-state conditions with respect to levels of appendix VIII, part 261, compounds in the residue. Thus, the approach of comparing waste-derived residue to normal residue may be problematic.

Finally, we note that, by establishing LDR exemption levels for Bevell residue, the Agency is not suggesting that: (1) the technology-based treatment standards are equivalent to, or appropriate to use as, health-based limits; or (2) Bevell

excluded residues should necessarily be subject to the LDR rules. These issues, as well as others, will be addressed in a follow-up rulemaking.<sup>4</sup>

#### B. Consideration of Using TC Limits

Several commenters suggested that the Agency establish limits using the same approach used for metals. Under that approach, the limits would apply to a TCLP extract and would be established at 100 times the health-based levels (e.g., maximum concentration limits (MCLs), and limits based on reference doses (RfDs) and unit risk values (for carcinogens) assuming the exposed individual drank two liters of extract per day for a lifetime) to consider dilution and attenuation.

While the Agency's ultimate policy preference is to establish risk-based regulatory levels, the difficulties involved in this task are formidable and controversial. For example, in this case, limits on extract concentrations of organics would not address the potential risk posed by ingestion of the residue itself (e.g., via fugitive dust). Although the extract limits may provide an adequate level of protection, the Agency has not addressed this potential exposure pathway at this time.

We note that, under HWIR, the Agency will define hazardous constituent concentration levels below which a waste is no longer considered "hazardous." Discussions concerning these levels are taking place in the context of the recently chartered Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR). The Committee chose to initially discuss how to provide greater flexibility for the remediation of contamination at hazardous waste sites. It has also begun discussions by focusing on concentrations below which waste mixtures and treatment residuals would no longer be subject to the hazardous waste regulations ("exit" criteria), while also discussing whether there is a regulatory approach to relatively quickly bring under regulation clearly hazardous waste not now controlled by the hazardous waste regulations (an "entry" rule). To help address the uncertainties of assessing multiple exposure pathways, the Agency also has initiated research to examine exposure of humans and the environment to hazardous constituents through a large number and variety of pathways.

<sup>4</sup> This latter issue is already the subject of rulemaking. See 58 FR 55166 (Oct. 24, 1993), and EPA will decide the question exclusively in that rulemaking.

#### C. Which Hazardous Constituents Are Affected

The Bevell comparison test is to be performed for any hazardous constituent (i.e., a constituent listed in appendix VIII of part 261) that may reasonably be expected to be a constituent in the hazardous waste being co-burned or co-processed in the Bevell unit, plus the list (found in appendix VIII of part 266) of all products of incomplete combustion that could also be found in the residues. See § 266.112(b)(1) and 56 FR 7199. These requirements remain unchanged by today's stay.

#### V. Implementation of the Revised Limits

The stay is conditioned on compliance with the interim LDR exemption values. Noncompliance with those values would mean that the owner or operator of the Bevell device is no longer meeting the conditions of the administrative stay and therefore must comply with the comparison test in § 266.112(b)(1), in order to qualify for the exclusion in § 266.112. If the owner or operator meets neither the conditions of the stay nor the comparison test, then the residue would be subject to regulation as a hazardous waste.

In addition, the stay does not affect the application of the procedural requirements in § 266.112(b)(2),<sup>5</sup> except as noted below.

#### A. Default Value is Stayed

Under the stay, the default value of 0.002 micrograms per kilogram established by § 266.112(b)(2) does not apply given that FO39 limits have been established for virtually every prohibited hazardous constituent for which analytical methods are readily available. In addition, that default value would not be appropriate because it was established as the lower 95th percentile of the (inappropriate) health-based limits.

#### B. Procedures for Handling Nondetects

The procedures for determining compliance when a constituent is not detected in the residue will be the same as those used for compliance with the FO39 nonmetal limits under the land disposal restrictions program. As provided by § 268.43(c)(3), the Agency

<sup>5</sup> In particular, the sampling and analysis requirements of § 266.112(b)(2)(iii) remain in effect. That paragraph requires sampling and analysis as often as necessary to determine whether residue generated during each 24-hour period exceeds the health-based limits. Further, compositing of samples is allowed, provided that the samples comprising the composite are taken from residue generated during a given 24-hour period.

considers that the limit for a constituent has been met if the facility has been unable to detect the constituent despite using its best efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are finalized (and no such guidance presently exists), the facility may demonstrate such efforts by achieving detection limits for the constituent that do not exceed an order of magnitude above the interim limit. See revised § 266.112(b)(2)(i).

We note that the Agency developed this policy for the FO39 nonmetal treatment standards because the standards were developed based on residual levels in incinerator ash, and incinerator ash matrices can be difficult to analyze. Under today's stay, however, the Agency is using these standards as interim limits for Bevill residues. (Incinerator ash is not a Bevill residue.) Although some Bevill residues may present a matrix as difficult to analyze (i.e., to achieve low detection limits) as incinerator ash (e.g., bottom ash from a coal-fired boiler burning hazardous waste fuel), the Agency believes that the vast majority of the residues eligible for the Bevill exclusion—cement kiln dust and bag house dust from light-weight aggregate kilns—will be easier to analyze than incinerator ash. As evidence, data from 23 samples on the concentration of 43 organic compounds in cement kiln dust from three facilities indicate that detection limits are well below the FO39 limits.<sup>6</sup> Thus, the Agency expects that cement facilities making a good-faith effort to achieve detection limits at or below the FO39 levels will be able to do so.

Further, the Agency believes that particulate matter collected from light-weight aggregate kilns represents an analytical matrix similar to cement kiln dust. Thus, light-weight aggregate facilities making a good-faith effort to achieve detection limits at or below the FO39 level should also be able to do so.

#### C. Analytical Methods

Several commenters expressed concerns about the availability of analytical methods to document compliance with the FO39 interim limits. One commenter asserts that the incineration-based FO39 nonwastewater standards are set below the levels of detection normally achievable in incinerator ash. As evidence, the commenter cites the results of a series of incineration tests the commenter performed in 1989 and 1990 and

submitted to the Agency as comments on earlier land disposal restrictions rulemakings.<sup>7</sup> EPA does not believe that the commenter's data demonstrates that the FO39 standards are below the level at which a competent analytical lab can quantify these compounds. In the Third Third Final Rule, EPA revised the FO39 nonwastewater standards between proposal and promulgation to accommodate the commenter's concerns. See the Response to Comments Background Document for the Third Third Final Rule. Moreover, we note that, as discussed above, incinerator ash is not a Bevill residue and that the majority of Bevill residues should pose a easier matrix to analyze than incinerator ash. Finally, if a particular Bevill residue matrix is difficult to analyze, we note that a facility is deemed to be in compliance for a constituent if the detection limit for the constituent is not more than an order of magnitude higher than the FO39 level.

Several commenters stated that SW-846 methods are not readily available for 47 of the FO39 compounds and noted that a laboratory provided a list of 47 compounds on the FO39 list "for which they do not test." EPA believes that each FO39 compound is a target analyte for at least one SW-846 method. In fact, EPA deliberately excluded from consideration in developing the FO39 list compounds on appendix VIII, part 261, without SW-846 methods. Moreover, EPA is aware that many commercial laboratories advertise that they analyze the entire "RCRA list" of compounds.

#### D. Immediate Effective Date

EPA is issuing this administrative stay pursuant to 5 U.S.C. 705, authorizing Agencies to stay administrative action pending judicial review when "justice so requires." See also Rule 18 of the Federal Rules of Appellate Procedure authorizing issuance of administrative stays pending review. (The issue of appropriate limits for nonmetals in co-processing residues from Bevill devices is at issue in the litigation over the BIF rule.) EPA believes that issuance of a stay for nonmetal constituents here is needed because the existing regulatory values are not reasonable. As explained above, they are based on an improper conversion of values resulting in a situation that mirrors massive ingestion of wastes in a manner that could not

<sup>7</sup> We note that the commenter's reference to Practical Quantitation Limits (PQL's) obscures the issue because the concept of PQL's has been replaced by Method Detection Limits, defined in the current First Update to SW-846, Chapter One.

possibly occur. These values should thus be changed immediately.

At the same time, the Agency believes it necessary to establish a replacement for the stayed exemption levels for Bevill residues. Having no interim limits for nonmetals would lead to unacceptable situations where persons co-processing hazardous wastes and Bevill materials could not establish whether their residues were significantly affected. Hence, they would automatically lose their Bevill status (assuming the statistical test cannot be satisfied), or, equally unacceptably, the residues from co-processing would retain Bevill status without having to determine whether the co-processing added significant levels of organic hazardous constituents to the residues (and thus creating the possibility of unregulated management of high volume, high hazard wastes, at odds with all the commands of subtitle C). To the extent good cause (pursuant to 5 U.S.C. 553(b)) is needed to justify the Agency's immediately effective adoption of interim nonmetal values, the existence of these two unacceptable alternatives establishes good cause, in EPA's view. EPA has also explained why use of interim values borrowed from LDR treatment standards is the most reasonable present course it can determine.

Several commenters also questioned whether the stay could be made retroactive to the original date of promulgation of the BIF rule. Rules with retroactive applicability are normally highly disfavored as a legal matter, see *Chemical Waste Management v. EPA*, 869 F.2d 1526, 1536 (D.C. Cir. 1989), and EPA is therefore not promulgating a retroactive rule here.

#### VI. State Authority

##### A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3006, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. EPA could not issue permits for any facilities in the State which the

<sup>6</sup> Correspondence from David Gossman, President, Gossman Consulting, Inc., to Bob Holloway, EPA, dated January 15, 1993.

State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits for those new requirements, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to achieve or retain final authorization, the HSWA applies in authorized States in the interim.

Today's stay affects regulatory provisions promulgated pursuant to section 3004(q) of RCRA, a provision added by HSWA. (In particular, that provision implements the ambiguous language in section 3004(q)(1) that "(n)othing in this subsection shall be construed to impair the provisions of section 6921(b)(3) of this title" [the Beville amendment].) Therefore, the Agency is adding today's provisions to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect simultaneously in all States, regardless of their authorization status. States that are already authorized to implement the BIF rule are also encouraged to undertake an administrative action (e.g., a stay or interim rule) consistent with the administrative stay announced today by EPA.

#### B. Effect on State Authorizations

With the exception of those States which have received authorization for the BIF rule, EPA will implement the BIF provisions of today's stay in all States. EPA's implementation of today's stay will continue until States modify their programs to adopt the provisions and the modification is approved by EPA. 40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. Although today's stay replaces inappropriate limits with higher interim limits, and States may implement more stringent controls than EPA, we nonetheless strongly

recommend that States adopt today's provisions. Because more stringent State program requirements are allowed under RCRA section 3009, EPA will not withhold authorization from a State that submits rules that contain the levels in the 2/21/91 rule. However, EPA recommends that the States modify their programs to adopt today's provisions, and that they do so on the same schedule that would be recommended for new regulations. Thus, we recommend that States modify their programs to adopt today's provisions by July 1, 1996, if a statutory change is not needed, or July 1, 1997, if a statutory change is needed. Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the provisions of today's stay to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

In implementing today's rule, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

#### VII. Paperwork Reduction Act

The information collection requirements of § 266.112 of the BIF rule have been approved by the Office of Management and Budget (OMB) under OMB Control number 2050-0073. This stay does not affect the information collection requirements of that section.

#### List of Subjects in 40 CFR Parts 266 and 271

Administrative practices and procedures, Hazardous waste, Intergovernmental relations, Recycling, Reporting and recordkeeping requirements.

Dated: October 15, 1993.

Carol M. Browner,  
Administrator.

I. In part 266:

#### PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. Section 266.112 is amended by revising paragraph (b)(2)(i) to read as follows:

#### § 266.112 Regulation of residues.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for FO39 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 for FO39 nonwastewaters. The stay will remain in effect until further administrative action is taken and notice is published in the

Federal Register and the Code of Federal Regulations; and

3. Appendix VII of part 266 is amended by designating the existing note at the end of the appendix as note 1 and adding a note 2 to read as follows:

**Appendix VII [Amended]**

Note 2: The levels specified in this appendix and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of this appendix are administratively stayed under the condition, for those constituents specified in § 266.112(b)(1), that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for FO39 nonwastewaters. See § 266.112(b)(2)(i).

II. In part 271:

**PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS**

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the Federal Register to read as follows:

**§ 271.1 Purpose and scope.**

(j) \* \* \*

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
November 9, 1993.	Burning of hazardous waste in boilers and industrial furnaces.	[insert FR page numbers].	October 15, 1993.

[FR Doc. 93-26041 Filed 11-8-93; 8:45 am]  
BILLING CODE 6560-60-P



# **Federal Register**

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**Tuesday  
November 9, 1993**

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**Part IV**

**Department of  
Education**

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**Rehabilitation Short-Term Training;  
Notices**

## DEPARTMENT OF EDUCATION

### Rehabilitation Short-Term Training

**AGENCY:** Department of Education.

**ACTION:** Notice of final priorities for Fiscal Year 1994.

**SUMMARY:** The Secretary announces final priorities for fiscal year (FY) 1994 under the Rehabilitation Short-Term Training program. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to maintain and upgrade the basic skills and knowledge of trained rehabilitation professionals. The following two priorities are announced: (1) Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act. (2) Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals with Disabilities in Postsecondary Education Settings.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Robert Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-8291. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Rehabilitation Short-Term Training program is authorized by section 302 of Title III of the Rehabilitation Act of 1973, as amended. The purpose of this discretionary grant program is to provide Federal support for the development and conduct of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

This program and the final priorities selected for this program support National Education Goal 5: By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The

Department supports a variety of training activities for vocational rehabilitation personnel so that they may more effectively assist individuals with disabilities acquire the knowledge and skills to obtain employment and compete in a global economy.

On September 7, 1993, the Secretary published a notice of proposed priorities for this program in the *Federal Register* (58 FR 47188).

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the *Federal Register*.

#### Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, two parties submitted comments. The commenters indicated support for the program but asked for certain changes in or clarification of the priorities. An analysis of the comments follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

#### General Comments—Comments Applying to More Than One Priority

**Comments:** The commenters supported the priorities but recommended that each of them contain explicit language dealing with the need to provide reasonable accommodations to persons with disabilities in all proposed training and dissemination of materials activities.

**Discussion:** The Secretary notes the importance of meeting the reasonable accommodations needs of persons with disabilities in all proposed training and material dissemination activities and points out that the regulations for this program in 34 CFR parts 385 and 390 require that the grantee meet those needs.

**Changes:** None.

#### Absolute Priority 1—Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act

**Comments:** One commenter recommended that the priority contain an explicit statement recommending the involvement of persons with disabilities who have dealt with Social Security issues and language encouraging proposals from independent living centers and other community-based, consumer-controlled centers.

**Discussion:** The Secretary agrees that the involvement of persons with disabilities who have had experience in dealing with Social Security issues and

the submission of proposals from consumer-controlled centers would be very appropriate, but the Secretary does not believe it is appropriate to specify the involvement of specific kinds of individuals or organizations.

**Changes:** None

#### Absolute Priority 2—Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals With Disabilities in Postsecondary Education Settings

**Comments:** One commenter recommended that language be added to specifically require applicants to address section 103(a)(3) in Title I of the Act by mandating training related to the availability of Pell Grants.

**Discussion:** The Secretary agrees that training on the availability of Pell Grants is important, but does not believe that the priority as written precludes or discourages its inclusion.

**Changes:** None

**Comments:** One commenter recommended that language be added that would clarify whether or not applicants should provide training on financial assistance programs and student support service programs only at the undergraduate level or whether the training should address graduate level study as well.

**Discussion:** The Secretary believes that the term "postsecondary education settings," as used in the title of the priority, is inclusive of both undergraduate and graduate programs.

**Changes:** None

#### Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities: Priority 1—Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act

#### Background

The Rehabilitation Act Amendments of 1992 (Pub. L. 102-569), direct the Secretary to furnish training to rehabilitation counselors and other rehabilitation personnel regarding the provisions of Titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities. Title II of the Social Security Act authorizes the Social Security Disability Insurance (SSDI) program to provide benefits for workers who have contributed to the Social



Security trust funds and become disabled before retirement age. SSDI also provides benefits for family members. In addition, an individual receiving SSDI payments for two years is eligible for Medicare benefits. Title XVI of the Social Security Act authorizes the Supplemental Security Income (SSI) program, a federally administered cash assistance program designed to provide a minimum income to aged, blind, and other disabled individuals. In most States, individuals who qualify for SSI payments also qualify for Medicaid, the Federal-State health insurance program for people with low income. Since the SSDI program was established in 1954 and the SSI program was established in 1972, Congress has established various referral arrangements for rehabilitation services to be provided to persons eligible for benefits under SSDI or SSI. In addition, Social Security legislation over the years has created work incentives to assist individuals with disabilities in their transition to employment.

A wide range of work incentives is available for SSI and SSDI recipients. Some incentives, such as income exclusions, continued Medicaid coverage, Plans for Achieving Self-Support, and student earned income exclusions, are available only for recipients of SSI. Other incentives, such as a trial work period, extended period of eligibility, continuation of Medicare, job coach subsidy, and employer subsidy, are available only to beneficiaries of SSDI. People on both SSI and SSDI are eligible for Impairment Related Work Expenses through which monthly out-of-pocket costs for disability-related services and items needed in order to work are deducted from gross monthly earnings to determine countable income.

Educators who are preparing individuals for careers in rehabilitation and trainers of personnel working in or with State vocational rehabilitation (VR) agencies need to become familiar with Social Security rehabilitation provisions and their related incentives to improve existing curricula on these provisions.

The Rehabilitation Services Administration of the U.S. Department of Education will coordinate the oversight of this project with the Social Security Administration (SSA) to ensure that the training provided is consistent with the regulations and related guidance and policy materials developed by SSA for implementation of the various incentive provisions.

### *Priority*

Projects must develop training on (1) the incentive provisions of Titles II and XVI of the Social Security Act; and (2) the relationship to and impact of these incentives on the provision of vocational rehabilitation services to individuals with disabilities. The training must focus on the skills necessary for VR personnel to develop and modify Individualized Written Rehabilitation Programs (IWRPs) for persons receiving SSI and SSDI and focus on the importance of collaboration between VR counselors and SSA staff in assisting individuals with disabilities to move from receiving SSI and SSDI to being employed.

Projects must use existing informational materials developed by the SSA on the subject of work incentives, including the SSA's materials on its approaches to and strategies for implementing these incentive provisions.

Projects must (1) provide training through seminars or workshops for both pre-service educators and State VR in-service training agency personnel to prepare them to be trainers of present and future rehabilitation counselors on incentive provisions under Titles II and XVI of the Social Security Act; and (2) be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols. Projects also must provide for coordination with Social Security Administration central, regional, or local offices to use existing training materials, to build on them, and to facilitate working relationships.

### **Priority 2—Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals With Disabilities in Postsecondary Education Settings**

#### *Background*

In recent years eligibility requirements for student financial assistance in the form of fellowships, scholarships, stipends, discretionary grants, and loans have changed significantly as a result of new laws and regulations. In providing rehabilitation services to individuals with disabilities, rehabilitation practitioners must be aware of related services and benefits provided pursuant to any Federal, State, or local program that will enhance the capacity of the individual to achieve his or her vocational objectives. Rehabilitation counselors, other rehabilitation personnel, and trainers of personnel working in or with State VR

agencies require up-to-date information on the provisions and administration of postsecondary student aid programs.

In addition to financial assistance, students with disabilities often require educational support services to participate fully in postsecondary education programs. School-based services are often provided by student service programs in postsecondary institutions. Frequently, arranging supports for an individual with a severe disability involves ensuring that collaboration occurs between postsecondary support programs and the rehabilitation, mental health, and independent living service systems. Informational materials are needed that will prepare rehabilitation counselors and other rehabilitation practitioners to collaborate effectively in assisting individuals with disabilities through student support services programs. Informational materials are needed for use by rehabilitation educators for use in their educational programs where rehabilitation personnel are being prepared for roles in rehabilitation services delivery.

### *Priority*

Projects must develop training on (1) student financial assistance programs and student support service programs for students with disabilities in postsecondary education; and (2) the relationship and impact of these financial and support services on the provision of vocational rehabilitation services to individuals with disabilities. For rehabilitation counselors, practitioners, and administrators, the training must focus on increasing their knowledge and skills, developing and modifying Individualized Written Rehabilitation Programs (IWRPs) for individuals with disabilities, and the importance of collaboration between VR staff and postsecondary education staff in assisting individuals with disabilities to benefit from higher education.

Projects must provide training through seminars or workshops for rehabilitation counselors, rehabilitation educators, and other personnel, including recipients of rehabilitation training program grant awards, on student financial assistance and student services available in postsecondary education settings for students with disabilities.

Projects must be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Applicable Program Regulations:** 34 CFR parts 385 and 390.

**Program Authority:** 29 U.S.C. 774

**Dated:** November 3, 1993.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

(Catalog of Federal Domestic Assistance Number 84.246, Rehabilitation Short-Term Training)

[FR Doc. 93-27547 Filed 11-8-93; 8:45 am]

BILLING CODE 4000-01-P

[CFDA No: 84.246]

**Rehabilitation Short-Term Training; Inviting Applications for New Awards for Fiscal Year (FY) 1994**

**Purpose of Program:** This program is designed for the support of special

seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

This program supports National Education Goal 5: By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may more effectively assist individuals with disabilities acquire the knowledge and skills to obtain employment and compete in a global economy.

**Eligible Applicants:** State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Rehabilitation Short-Term Training program.

**Deadline for Transmittal of Applications:** January 18, 1994.

**Deadline for Intergovernmental Review:** March 23, 1994.

**Applications Available:** November 15, 1993.

**Available Funds:** \$340,000.

**Estimated Average Size of Awards:** \$150,000

Specific information regarding the estimated range of awards and number

of awards appears in the chart in this notice.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 12 months.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 390.

**Priorities**

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the Federal Register, apply to these competitions.

**For Applications:** Telephone (202) 205-8327. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**For Further Information Contact:** Robert Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-8291.

**Program Authority:** 29 U.S.C. 774.

**Dated:** November 3, 1993.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

CFDA No.	Priority areas	Estimated range of awards	Estimated number of awards
84.246A	Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act.	\$140,000-\$170,000	1
84.246B	Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals with Disabilities in Postsecondary Education Settings.	\$140,000-\$170,000	1

[FR Doc. 93-27548 Filed 11-8-93; 8:45 am]

BILLING CODE 4000-01-P

# Federal Register

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**Tuesday  
November 9, 1993**

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**Part V**

## **Department of Education**

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**Independent Evaluation of the National  
Assessment of Educational Progress  
(NAEP) Trial State Assessment; Grants  
Availability; Notice**

## DEPARTMENT OF EDUCATION

[CDFA No.: 84.999A]

**Independent Evaluation of the National Assessment of Educational Progress (NAEP) Trial State Assessment**

Notice inviting applications for new awards for fiscal year 1994.

**Purpose of Program:** To conduct, through a nationally recognized organization, an independent evaluation of the National Assessment of Educational Progress (NAEP) Trial State Assessment for 1994.

**Eligible Applicants:** Section 406(i)(2)(c)(vi) of the General Education Provisions Act (20 U.S.C. 1221e-1), requires that the Commissioner of Education Statistics provide for an independent evaluation of the trial State assessments conducted by "a nationally recognized organization (such as the National Academy of Sciences or the National Academy of Education)." However, other nationally recognized organizations are eligible to compete for the grant.

**Deadline for Transmittal of Applications:** December 27, 1993

**Applications Available:** November 16, 1993

**Estimated Available Funds:** \$750,000 in Fiscal Year 1994 (Budget Period February 1994 to January 1995).

**Estimated Size of Award:** Up to \$1,800,000 over a 20-month period (contingent upon the total amount of funding for NAEP and the amount required for other NAEP priorities).

**Estimated Number of Awards:**

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** February 1994—September 1995

**Applicable Regulations:** The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74, 75, 77, 80, 81, 82, 85, and 86.

**Selection Criteria:** In evaluating applications for grants under this competition, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes these 15 points as follows:

**Plan of Operation** (34 CFR 75.210(b)(3)). Ten points are added to this criterion for a possible total of 25 points.

**Quality of Key Personnel** (34 CFR 75.210(b)(4)). Five points are added to this criterion for a possible total of 12 points.

**For Applications or Information Contact:** Sharif Shakrani, U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, 555 New Jersey Avenue, N.W., Room 308, Washington, D.C. 20208-5653. Telephone: (202) 219-1761. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Program Authority:** 20 U.S.C. 1221e-1.

Dated: November 4, 1993.

**Sharon Porter Robinson,**  
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93-27546 Filed 11-8-93; 8:45 am]

BILLING CODE 4000-01-P

# **Federal Register**

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**Tuesday  
November 9, 1993**

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**Part VI**

**Department of  
Health and Human  
Services**

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**National Institutes of Health**

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**Recombinant DNA; Advisory Committee  
Meeting and Proposed Actions Under the  
Guidelines; Notices**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on December 2-3, 1993. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. on December 2, 1993, to adjournment at approximately 5 p.m. on December 3, 1993. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting.

Dr. Nelson A. Wivel, Director, Officer of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496-9838, FAX (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the

NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: October 29, 1993.

Susan K. Feldman,  
Committee Management Officer, NIH.  
{FR Doc. 93-27571 Filed 11-8-93; 8:45 am}  
BILLING CODE 4140-01-M

#### Recombinant DNA Research; Proposed Actions Under the Guidelines

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

**SUMMARY:** This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on December 2-3, 1993. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

**DATES:** Comments received by November 22, 1993, will be reproduced and distributed to the RAC for consideration at its December 2-3, 1993, meeting.

**ADDRESSES:** Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301-496-9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9838.

**SUPPLEMENTARY INFORMATION:** The NIH will consider the following actions

under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

#### I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Chang

On October 6, 1993, Dr. Alfred E. Chang of the University of Michigan Medical Center, Ann Arbor, Michigan, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Adoptive Immunotherapy of Melanoma with Activated Lymph Node Cells Primed In Vivo with Autologous Tumor Cells Transduced with the IL-4 Gene.

#### II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Haubrich

On October 6, 1993, Dr. Richard Haubrich of the University of California at San Diego Treatment Center, San Diego, California (sponsored by Viagene, San Diego, California), submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: An Open Label, Phase I/II Clinical Trial to Evaluate the Safety and Biological Activity of HIV-IT(V) (HIV-1 II Benv/rev-Retroviral Vector) in HIV-1-Infected Subjects.

#### III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Liu and Young

On October 7, 1993, Drs. Johnson M. Liu and Neal S. Young of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Retroviral Medicated Gene Transfer of the Fanconi Anemia Complementation Group C Gene to Hematopoietic Progenitors of Group C Patients.

#### IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Oldfield and Ram

On October 1, 1993, Drs. Edward H. Oldfield and Zvi Ram of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Intrathecal Gene Therapy for the Treatment of Leptomeningeal Carcinomatosis.

**V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Schuening**

On September 29, 1993, Dr. Friedrich Schuening of the Fred Hutchinson Cancer Research Center, Seattle, Washington, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Retrovirus-Mediated Transfer of the cDNA for Human Glucocerebrosidase into Peripheral Blood Repopulating Cells of Patients with Gaucher's Disease.

**VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Sorscher and Logan**

On October 6, 1993, Drs. Eric J. Sorscher and James J. Logan of the University of Alabama, Birmingham, Alabama, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy for Cystic Fibrosis Using Cationic Liposome Mediated Gene Transfer: A Phase I Trial of Safety and Efficacy in the Nasal Airway.

**VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Sznol**

On October 7, 1993, Dr. Mario Sznol of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Phase I Trial of B7-Transfected Lethally Irradiated Allogeneic Melanoma Cell Lines to Induce Cell-Mediated Immunity Against Tumor-Associated Antigens Presented by HLA-A2 or HLA-A1 in Patients with Stage IV Melanoma.

**VIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Rubin**

On October 6, 1993, Dr. Joseph Rubin of the Mayo Clinic, Rochester, Minnesota (sponsored by Vical, Inc., San Diego, California), submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Phase I Study of Immunotherapy of Advanced Colorectal Carcinoma by Direct Gene Transfer into Hepatic Metastases.

**IX. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Welsh**

On October 4, 1993, Dr. Michael J. Welsh of the Howard Hughes Medical Institute, Iowa City, Iowa, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Adenovirus-Mediated Gene Transfer of CFTR to the Nasal Epithelium & Maxillary Sinus of Patients with Cystic Fibrosis.

**X. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Sobol and Royston**

On October 6, 1993, Drs. Robert E. Sobol and Ivor Royston of the San Diego Regional Cancer Center, San Diego, California, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Immunization of Colon Carcinoma Patients with Autologous Irradiated Tumor Cells and Fibroblasts Genetically Modified to Secrete Interleukin-2 (IL-2): A Phase I Study.

**XI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Sobol and Royston**

On October 6, 1993, Drs. Robert E. Sobol and Ivor Royston of the San Diego Regional Cancer Center, San Diego, California, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Immunization of Glioblastoma Patients with Tumor Cells Genetically Modified to Secrete Interleukin-2 (IL-2): A Phase I Study.

**XII. Report on Minor Modifications to NIH-Approved Human Gene Transfer Protocols**

Dr. LeRoy Walters, Chair of the Recombinant DNA Advisory Committee, will present an update on minor modifications to NIH-approved human gene transfer protocols:

**XIII. Working Group on Data Management**

Dr. Brigid Leventhal, Chair of the Working Group on Data Management, will provide a summary of the reports submitted to the Office of Recombinant DNA Activities by the principal investigators of NIH-approved protocols, and make recommendations regarding actions to be taken in the event of non-reporting.

**XIV. Amendments to Footnotes 21 and 22 and Section III-A-3 of the NIH Guidelines Regarding Recombinant DNA Vaccines**

Dr. Stephen Straus, Chair of the Working Group on Vaccines, will present an overview of the proposed amendments to Footnotes 21 and 22 and Section III-A-3. The proposed amendments will define those categories of experiments involving the administration of recombinant DNA vaccines that are exempt from Recombinant DNA Advisory Committee review and National Institutes of Health and Institutional Biosafety Committee approval.

**XV. Amendments to Sections III, IV, V of the NIH Guidelines and the Points To Consider Regarding NIH (ORDA) Review and Approval of Certain Categories of Human Gene Transfer Experiments That Qualify for the Accelerated Review Process**

Dr. Robertson Parkman, Chair of the Working Group on Accelerated Review Protocols, will present an overview of the proposed amendments to the NIH Guidelines and the Points to Consider. The proposed amendments will: (1) Establish an accelerated review process for certain categories of human gene transfer experiments, (2) allow the National Institutes of Health (Office of Recombinant DNA Activities) to assign the appropriate review category to all human gene transfer proposals that are submitted in compliance with the NIH Guidelines, and (3) allow the National Institutes of Health (Office of Recombinant DNA Activities) to approve those categories of human gene transfer experiments that qualify for the accelerated review process in consultation with one or more Recombinant DNA Advisory Committee members, as necessary. Those human gene transfer experiments approved by the National Institutes of Health (Office of Recombinant DNA Activities) through the accelerated review process will be provided in a report by the Chair of the Recombinant DNA Advisory Committee at the next scheduled committee meeting. Those human gene transfer experiments approved by National Institutes of Health (Office of Recombinant DNA Activities) will be included in the list of approved experiments and will be available from the Office of Recombinant DNA Activities, Building 31, room 4B11, Bethesda, Maryland 20892.

**XVI. Presentation on Informed Consent Issues**

Dr. Gary Ellis, Director, Office for Protection from Research Risks, National Institutes of Health, Bethesda, Maryland, will address informed consent issues. Dr. Doris Zallen, Chair of the Working Group on Informed Consent, will lead a discussion concerning gene therapy protocols and informed consent.

**XVII. Update on Cystic Fibrosis Protocol/Dr. Crystal**

Dr. Ronald G. Crystal of the National Institutes of Health, Bethesda, Maryland, will present an update on his protocol entitled: A Phase I Study, in Cystic Fibrosis Patients, of the Safety, Toxicity, and Biological Efficacy of a Single Administration of a Replication Deficient, Recombinant Adenovirus

Carrying the cDNA of the Normal Human Cystic Fibrosis Transmembrane Conductance Regulator Gene in the Lung.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to

attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 2, 1993.

**Daryl A. Chamblee,**

*Acting Deputy Director for Science Policy and Technology Transfer.*

[FR Doc. 93-27572 Filed 11-8-93; 8:45 am]

BILLING CODE 4140-01-M



# Federal Register

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**Tuesday**  
**November 9, 1993**

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## **Part VII**

**Department of Defense**  
**General Services**  
**Administration**

**National Aeronautics and**  
**Space Administration**

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**48 CFR Part 13**  
**Federal Acquisition Regulation; Blanket**  
**Purchase Agreements Invoicing for Food**  
**Products; Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 13**

[FAR Case 91-82]

**Federal Acquisition Regulation;  
Blanket Purchase Agreements  
Invoicing for Food Products**

**AGENCIES:** Department of Defense (DOD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency  
Acquisition Council and the Defense  
Acquisition Regulations Council are  
proposing to amend the Federal  
Acquisition Regulation (FAR) to cross-  
reference the prompt payment  
requirements of FAR and to call  
attention to the short prompt payment  
periods for certain food products listed  
in FAR.

**DATES:** Comments should be submitted  
on or before January 10, 1994, to be  
considered in the formulation of a final  
rule.

**ADDRESSES:** Interested parties should  
submit written comments to: General  
Services Administration, FAR  
Secretariat (VRS), Attn: Ms. Beverly  
Fayson, 18th & F Streets, NW., Room  
4035, Washington, DC 20405.

Please cite FAR case 91-82 in all  
correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Jack O'Neill at (202) 501-3856 in  
reference to this FAR case. For general

information, contact the FAR  
Secretariat, room 4035, GS Building,  
Washington, DC 20405, (202) 501-4755.  
Please cite FAR case 91-82.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Defense Acquisition Regulations  
Council and the Civilian Agency  
Acquisition Council agreed that the  
language in FAR 13.203-1 needs  
clarifying with respect to invoicing and  
payment procedures for blanket  
purchase agreements, to ensure  
compliance with the requirements of the  
Prompt Payment Act and Office of  
Management and Budget (OMB)  
Circular A-125, Prompt Payment, as  
implemented in FAR subpart 32.9.

**B. Regulatory Flexibility Act**

The proposed rule does not constitute  
a significant FAR revision within the  
meaning of FAR 1.501 and Public Law  
98-577 and publication for public  
comment is not required. Therefore, the  
Regulatory Flexibility Act does not  
apply. However, public comments on  
the proposed change are welcomed.  
Such comments must be submitted  
separately and cite 5 U.S.C. 601 in  
correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does  
not apply because the proposed changes  
to the FAR do not impose recordkeeping  
or information collection requirements,  
or collections of information from  
offerors, contractors, or members of the  
public which require the approval of the  
Office of Management and Budget under  
44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 13**

Government procurement.

Dated: November 3, 1993.

**Albert A. Vicchiolla,**

*Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR  
part 13 be amended as set forth below:

**PART 13—SMALL PURCHASE AND  
OTHER SIMPLIFIED PURCHASE  
PROCEDURES**

1. The authority citation for 48 CFR  
part 13 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C.  
chapter 137; and 42 U.S.C. 2473(c).

2. Section 13.203-1 is amended by  
revising the introductory text of  
paragraph (j)(7) and adding paragraph  
(j)(7)(v) to read as follows:

**13.203-1 General.**

\* \* \* \* \*

(j) \* \* \*

(7) *Invoices.* One of the following  
statements (except that statement  
(j)(7)(iii) should not be used if either the  
accumulation of the individual invoices  
by the Government materially increases  
the administrative costs of this purchase  
method, or the accumulation is  
inconsistent with prompt payment  
requirements in subpart 32.9 and  
implementing agency regulations) (see  
particularly 32.905(d) for food  
products):

\* \* \* \* \*

(v) Individual invoices shall be  
processed and paid for each delivery, if  
necessary, to comply with the Prompt  
Payment clause of the agreement.

\* \* \* \* \*

[FR Doc. 93-27483 Filed 11-8-93; 8:45 am]

BILLING CODE 6820-34-M

**Administrative**

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**Tuesday  
November 9, 1993**

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**Part VIII**

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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**48 CFR Part 14, et al.  
Federal Acquisition Regulation;  
Postponement of Bid Openings or  
Closing Dates; Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAR Case 91-95]

Federal Acquisition Regulation; Postponement of Bid Openings or Closing Dates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing a change to the FAR and the clauses "Late Submissions, Modifications, and Withdrawals of Bids", and "Late Submissions, Modifications, and Withdrawals of Proposals," to clarify the time of receipt of bids/proposals when an emergency or unanticipated event interrupts government processes for receiving mail at a Government installation on the date specified for receipt of bids/proposals.

DATES: Comments should be submitted on or before January 10, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR case 91-95 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 91-95.

SUPPLEMENTARY INFORMATION:

A. Background

The revisions to FAR 14.402-3 and 52.214-7, Late Submissions, Modifications and Withdrawals of Bids, clarify policy currently in FAR 14.402-3 regarding postponement of a scheduled bid opening due to an emergency or unanticipated event. The revisions to FAR 15.412 and 52.215-10 are proposed to clarify the policy regarding exact time for receipt of proposals when an emergency or

unanticipated event interrupts normal government processes for receiving mail on the date specified for receipt of proposals and urgent requirements do not allow time to formally extend the closing date for proposals. The other changes are editorial.

B. Regulatory Flexibility Act

The proposed 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, 5 U.S.C. 601, et seq., because it will clarify the policy for determining the exact time of receipt of bids/proposals when an emergency or unanticipated event interrupts normal government processes for receiving mail on the date specified for receipt of bids/proposals. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 91-95), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: November 3, 1993.

Albert A. Vicchiolla, Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 14, 15, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 14, 15, 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(c).

PART 14—SEALED BIDDING

2. Section 14.402-3 is amended by revising paragraph (c) to read as follows:

14.402-3 Postponement of openings.

(c) In the case of paragraph (a)(2) of this section, and when urgent Government requirements preclude amendment of the solicitation as

prescribed in 14.208, the time specified for opening of bids will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal Government processes resume. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining "late bids" under 14.304. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.411 is amended by revising paragraph (a) to read as follows:

15.411 Receipt of proposals and quotations.

(a) The procedures for receipt and handling of proposals and quotations should be similar to those prescribed in 14.401. Proposals and quotations shall be marked with the date and time of receipt.

4. Section 15.412 is amended by revising paragraph (b) to read as follows:

15.412 Late proposals and modifications.

(b) Offerors are responsible for submitting offers, and any modifications to them, so as to reach the Government office designated in the solicitation on time. If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date as usually prescribed by 15.410, the time specified for receipt of proposals will be deemed to be extended to the same time of day, specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.214-7 is amended in the clause by revising the date in the heading and adding paragraph (h) to read as follows:

Late Submissions, Modifications, and Withdrawals of Bids (Date)

(h) If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

6. Section 52.215-10 is amended by revising the introductory text, the date in the heading of the clause, and adding paragraph (i) to read as follows:

**52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.**

As prescribed in 15.407(c)(6), insert the following provisions:

**Late Submissions, Modifications, and Withdrawals of Proposals (Date)**

\* \* \* \* \*

(i) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements

preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m. local time for the designated Government office.

[FR Doc. 93-27484 Filed 11-8-93; 8:45 am]

BILLING CODE 6820-34-M



# Federal Register

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Tuesday  
November 9, 1993

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## Part IX

### Department of Health and Human Services

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Food and Drug Administration

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21 CFR Part 201, et al.  
Human Drugs: Labeling of Drug Products  
(OTC); Proposed Rules

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Parts 201, 310, and 314**

[Docket No. 92N-0076]

RIN 0905-AA06

**Labeling of Drug Products for Over-the-Counter Human Use Subject to an Approved Application or Abbreviated Application**

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing that the alternative labeling policy that applies to over-the-counter (OTC) drug products that are marketed under an OTC drug monograph be extended, in part, to OTC drug products that are marketed under an approved new drug or an abbreviated new drug application (hereinafter collectively called an application). The label and labeling of OTC drug products approved under an application would be permitted to contain, in a prominent and conspicuous location, either the designation "APPROVED USES," together with the specific wording on indications for use established under an approved application, all of which must appear within a boxed area; or the designation "APPROVED INFORMATION," together with the specific wording on indications for use and other applicable labeling (e.g., statement of identity, warnings, and directions) established under an approved application, all of which must appear within a boxed area. FDA is issuing this proposal to make the labeling of OTC drug products consistent, whether the products are marketed under an approved application or under an OTC drug monograph.

**DATES:** Written comments by January 10, 1994.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of May 1, 1986 (51 FR 16258), FDA issued a final rule in

§ 330.1(c)(2) (21 CFR 330.1(c)(2)) establishing alternate labeling for OTC drug products marketed under an OTC drug monograph. (OTC drug products that follow all conditions for marketing set out in an OTC drug monograph are deemed generally recognized as safe and effective and not misbranded.) The final rule established three alternatives for the "Indications" portion of OTC drug product labeling. The label and labeling of OTC drug products marketed under an OTC drug monograph are required to contain, in a prominent and conspicuous location, the "Indications" that have been established in a final monograph. At the option of the manufacturer, this labeling may be designated "APPROVED USES," or given a similar permitted designation. If the "APPROVED USES" designation is used, the labeling must appear within a boxed area. Other labeling in the monograph may also be placed within the boxed area, in which case the labeling is designated "APPROVED INFORMATION," rather than "APPROVED USES." All information must be in the exact language established in the monograph. In addition, there must be a statement that the boxed information was published by FDA. In lieu of this latter statement, the designation of the boxed area may be modified to read "FDA APPROVED USES" or "FDA APPROVED INFORMATION," or similar wording.

As a second alternative, "Indications" labeling may contain other truthful and nonmisleading statements, describing only those indications for use that have been established in an applicable monograph. In this case, the "APPROVED USES" or "APPROVED INFORMATION" designation may not be used.

Under a third alternative, the labeling may meet the boxed area requirement, described above, and in addition use other truthful and nonmisleading substitute or alternate language describing indications for use. This additional language must appear elsewhere in the labeling (outside the boxed area).

OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must use the specific wording established under the monograph.

During the time that the final rule was being developed, several comments requested that the "FDA APPROVED USES" designation be permitted for OTC drug products marketed under an approved application as well as for those marketed under a monograph. The agency agreed in principle, stating that it would promote consistency in the

labeling of OTC drug products if all products, whether approved under an application or included in a monograph, were permitted to use the terms "FDA APPROVED USES" or "FDA APPROVED INFORMATION" in their labeling. However, since § 330.1(c) was in a portion of the FDA regulations that applied only to OTC drugs covered by a monograph, a separate regulation would be required to address labeling of OTC drug products subject to an application. Accordingly, the agency is now proposing regulations under parts 310 and 314 (21 CFR parts 310 and 314) for alternate labeling of OTC drug products that are subject to an approved application.

**I. OTC Drug Products Subject to an Application**

There are several classes of OTC drug products that are subject to an application. Examples include:

1. Products containing ingredients that are approved in monographs but the products are nonetheless subject to an application because the ingredient is formulated in a sustained-release dosage form. Examples include chlorpheniramine maleate (antihistamine) and pseudoephedrine hydrochloride (nasal decongestant).
2. Products containing ingredients that have been approved in a monograph for some indications but are not included in a monograph for the use covered by the approved application. An example of such an ingredient is doxylamine succinate, which has been proposed for inclusion in the antihistamine drug products monograph but which has not been approved as a nighttime sleep-aid monograph ingredient. Doxylamine succinate is the subject of an approved application for the nighttime sleep-aid indication.
3. Products containing ingredients for which an application for OTC use was approved before the ingredient was included in the OTC drug review. Examples include triprolidine hydrochloride (antihistamine) and dexbrompheniramine maleate (antihistamine). These applications remain in effect until a final monograph is issued and becomes effective.
4. Products containing ingredients that are not in the OTC drug review but which have indications for use approved in an application where the indications are similar to those in a proposed or final OTC drug monograph. Examples include loperamide hydrochloride (antidiarrheal), ibuprofen (analgesic/antipyretic), and tioconazole (topical antifungal).
5. Products containing ingredients that are not in the OTC drug review and



for which there currently are no similar OTC drug products. An example is clotrimazole for vaginal yeast infections.

The above examples are not intended to be all inclusive of the types of OTC drug products that are subject to an application.

## II. OTC Application Labeling Policy

During the course of the OTC drug review, the agency has established labeling policy that is intended to promote uniformity and to help prevent consumer confusion in the marketplace. The agency's policy provides that OTC drug products containing an ingredient in any of the first four classes described above should be labeled in the same manner as a corresponding or similar OTC drug product labeled and marketed under a proposed or final OTC drug monograph. Where only an advance notice of proposed rulemaking (panel report) has been published, the agency has used it as a guide in approving labeling for OTC drug products marketed under an application. Where both a panel report and a tentative final monograph have been published, the agency has used the tentative final monograph as a guide, but has allowed OTC drug products approved under an application to follow either the panel report or the tentative final monograph. Where a final OTC drug monograph has been published, the agency has used the monograph as a guide in approving OTC labeling in an application. The agency intends to continue to follow this procedure during the completion of the OTC drug review in approving the labeling of OTC drug products subject to an application.

## III. FDA Approved Language for New Drugs for OTC Use

In response to the proposal to establish alternate labeling for OTC drug products, one comment noted that section 301(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(l)) prohibits the use in labeling of any representation or suggestion that "approval of an application with respect to such drug \* \* \* is in effect under section 505, 515, or 520(g) \* \* \*." The comment argued that the use of the "FDA APPROVED" language is contrary to the intent and meaning of section 301(l) of the act. The comment stated that as a result, "non-NDA'd OTC drug products would be allowed to use such language, but that NDA'd OTC drug products would be prohibited from using it." The comment maintained that the issue of labeling of OTC drugs subject to an application as "FDA APPROVED" could only be resolved by amendment of the act. The comment

cited the then pending "FDA Approval Labeling Act" (H.R. 2244) (Ref. 1) and mentioned that this act would have allowed the statement "FDA APPROVED," followed by the application number on prescription drugs. The comment suggested that FDA use a similar approach for the labeling of OTC drug products marketed under an application. (H.R. 2244 was passed by the House, but was never enacted.)

Another comment contended that section 301(l) of the act can be interpreted to apply only to statements connoting new drug approval pursuant to section 505 of the act (21 U.S.C. 355) and therefore terminology such as "APPROVED USES," when used with respect to a product's labeling, is not prohibited by the act.

This comment stated that equal treatment of OTC drug products marketed under an application and marketed under an OTC drug monograph would be consistent with FDA's policy of promoting uniformity in OTC drug labeling under applicable statutory standards. The comment maintained that uniformity would lessen consumer confusion about the label indications on OTC drugs, because there is no difference to the consumer between an OTC drug marketed pursuant to an application or one marketed under a monograph. The comments requested that the agency clarify that the "FDA APPROVED USES" language would also be permitted for OTC drugs marketed pursuant to an application, and that the agency declare that this language would not be in violation of section 301(l) of the act.

As discussed in the final rule (51 FR 16258), section 301(l) of the act, by its own terms, prohibits only representations or suggestions that an approval of an application under section 505 of the act is in effect for a drug product. It does not apply to requirements for labeling related to indications for use, such as those in the alternate labeling regulation in § 330.1(c). Similarly, the prohibition in section 301(l) of the act does not apply to the alternate labeling proposed in this notice.

## Reference

(1) Comment No. C00072, Docket No. 82N-0154.

## IV. Proposed Regulation

FDA is proposing to amend the labeling requirements in 21 CFR part 310 for new drugs approved for OTC use by adding new § 310.104. Because 21 CFR part 201 sets forth the general provisions for the labeling of drugs, new

§ 201.65 is being added as a cross-reference to new § 301.104 for the convenience of the reader. As proposed, the label and labeling of OTC drug products approved under an application would be permitted to contain in a prominent and conspicuous location either: (1) The designation "APPROVED USES," together with the specific wording on indications for use established under an approved application, all of which must appear within a boxed area, or (2) the designation "APPROVED INFORMATION," together with the specific wording on indications for use and other applicable labeling (e.g., statement of identity, warnings, and directions) established under an approved application, all of which must appear within a boxed area. The designation of the boxed area may be modified to read: "FDA APPROVED USES" or "FDA APPROVED INFORMATION," as appropriate, or "USES (or "INFORMATION") APPROVED BY THE FOOD AND DRUG ADMINISTRATION," or other similar wording.

Section 330.1(c) permits the label and labeling of OTC drug products that are marketed under an OTC drug monograph to use wording to describe indications for use other than that established in an OTC drug monograph. However, such alternative language must meet the statutory prohibitions against false or misleading labeling, and it may neither appear within a boxed area nor be designated as "APPROVED USES." Also, the regulations provide that such labeling may contain the approved monograph language on indications for use, within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which must appear elsewhere in the labeling (outside the box). In either case, manufacturers of OTC drugs covered by an OTC drug monograph may use these labeling alternatives without FDA preclearance of the labeling. However, all labeling for new drugs, including alternative language relating to indications for use, requires preclearance by FDA. FDA may approve alternate labeling language for describing indications for use during the process of approving applications for new OTC drugs. Therefore, since the proposal encompasses all labeling approved under an application, the present proposed regulation does not address, as a separate matter, possible labeling alternatives of the type allowed under a monograph.

The agency is also proposing to amend § 314.70(d) relating to changes to

an approved application. As proposed, if the "APPROVED USES"/"APPROVED INFORMATION"/boxed area concept is the only change being made in the application's approved labeling, manufacturers would not be required to submit a supplemental application but could inform the agency when this change occurred by including this information in the annual report for that application.

As discussed above, many classes of OTC drug products subject to an application are very closely related to OTC drug products included in the OTC drug review. In most instances, the labeling for OTC drug products is based on labeling developed during the course of the OTC drug review. Therefore, the labeling is virtually the same whether a product is marketed under an OTC drug monograph or an approved application. The agency has considered whether new drugs with applications approved for OTC use should be permitted to use the "APPROVED USES" or "APPROVED INFORMATION" language as part of their labeling, before an OTC drug monograph has become final for the corresponding class of OTC drugs. In the case of drugs marketed under a monograph, the "APPROVED USES" terminology described in § 330.1(c)(2) cannot be implemented until relevant OTC drug monographs are issued in final form. A product cannot bear an "APPROVED USES" designation until the use has, in fact, been approved by FDA, which will only occur when the final OTC drug monograph is issued. Moreover, for many years during the course of the OTC drug review, the agency has approved applications for new drugs for OTC use subject to the following conditions:

These (labeling) changes are requested to ensure parity of regulatory treatment among similar products marketed over-the-counter, whether or not they are the subject of an approved application. Please note that, should this ingredient be included in a final monograph concerning OTC (name of monograph) drug products, you will be expected to conform to the monograph requirements.

The use of "FDA APPROVED" language will be implemented on a drug category-by-category basis as final OTC drug monographs are issued. Because of the interrelationship of the labeling of drugs marketed under an OTC drug monograph and drugs approved under an application, the agency believes that new drugs for OTC use also should not use the "APPROVED USES" designation until the final OTC drug monograph for the corresponding class of OTC drugs has been issued. Thereafter, the

"APPROVED USES"/boxed area concept would be implemented at the same time for all drug products in that category, whether marketed under an OTC drug monograph or an application. The agency believes that this approach would promote consistency in the labeling of OTC drugs and reduce consumer confusion. Unless labeling for both types of OTC drugs within the same drug category is implemented at the same time, consumers could be misled into believing that one of the two types of OTC drugs (whether subject to a monograph or to an application) has a special status.

#### V. Abbreviated Applications—"Same" Labeling Requirements

Section 505(j)(2)(A)(v) of the act requires that the labeling for a new drug approved via an abbreviated application be the same as the labeling approved for the listed drug except for changes required because of differences approved under a petition or because the new drug and the listed drug are produced or distributed by different manufacturers. If this "sameness" requirement were applied literally to this new alternate labeling proposal, it could be interpreted as meaning that a manufacturer of an OTC drug product approved via an abbreviated application could not use the "APPROVED USES" or "APPROVED INFORMATION" language in its product's labeling unless the manufacturer of the listed drug were to do so first. This could also mean that if the manufacturer of the listed drug chose not to use the "APPROVED USES" or "APPROVED INFORMATION" language in its product's labeling, then the manufacturers of other similar products approved via abbreviated applications could never use this language in their labeling. The agency does not find this to be an equitable situation.

The agency does not see any inequities if a new drug approved for marketing via an abbreviated application pursuant to section 505(j)(2) of the act (often referred to as a "generic drug") were to contain the "APPROVED USES" or "APPROVED INFORMATION" language and the listed drug did not contain this information in its labeling, or if the generic drug contained this information in its labeling before the listed drug did, or if the listed drug contained this information and some or all generic versions of the drug did not contain the information. Similarly, all manufacturers of OTC drug products marketed via monographs may not elect to use "APPROVED USES/APPROVED INFORMATION" labeling, nor will

manufacturers implement such labeling at the same time. The agency does not believe that consumers would be misled by such a difference in product labeling, whether the product is marketed pursuant to an approved application or an OTC drug monograph. Accordingly, FDA proposes that manufacturers of new drugs approved via an abbreviated application pursuant to section 505(j)(2) of the act be allowed to use this limited alternative labeling provided for in proposed § 310.104. Unless otherwise required under § 314.70(b) or (c), manufacturers do not need to submit a supplement to make such changes, but shall describe the changes in the next annual report for the application in accord with the procedures proposed in § 314.70(d)(10). All conditions as to when such labeling could be implemented, as described above, would also apply to new drugs approved pursuant to section 505(j)(2) of the act.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12866, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Manufacturers would normally have up to 12 months after each final OTC drug monograph is published in the Federal Register to revise their product labeling. In most cases, this would be routinely done at the next printing so that minimal costs should be incurred. Likewise, manufacturers of new drugs for OTC use are not expected to add the "FDA APPROVED" terminology to their product labeling until the next label printing. Because the labeling for these drug products will already have been approved by the agency, the agency is providing that manufacturers may include this change in the conditions in an approved application, as one of the changes described in the annual report for that application. (See § 314.70(d).) Thus, manufacturers will be able to incorporate alternate labeling, if any is selected, in the normal course of business. The impact of the proposed rule, if implemented, appears to be minimal. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12866. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant

economic impact that this rulemaking would have on manufacturers of new drug products for OTC use. Comments regarding the impact of this rulemaking on these manufacturers should be accompanied by documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule. The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before January 10, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

**21 CFR Part 201**

Drugs, Labeling, Reporting and recordkeeping requirements.

**21 CFR Part 310**

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

**21 CFR Part 314**

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 201, 310, and 314 be amended as follows:

**PART 201—LABELING**

1. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530-542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360es, 371, 374, 379e); secs. 215, 301, 351, 354-360F, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b-263n, 264).

2. Section 201.65 is added to subpart C to read as follows:

**§ 201.65 Labeling of new drug products for over-the-counter human use.**

For labeling describing the "Indications" that have been established for a new drug product for over-the-counter human use, see § 310.104 of this chapter.

**PART 310—NEW DRUGS**

3. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360g, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

4. Section 310.104 is added to subpart B to read as follows:

**§ 310.104 Labeling of new drug products for over-the-counter human use.**

(a)(1) The label and labeling of the product contain in a prominent and conspicuous location the labeling describing the "Indications" that have been established in an approved application or abbreviated application. Subject to the requirements of paragraph (c) of this section, at the discretion of the applicant, this portion of the labeling may be designated "APPROVED USES," or be given a similar designation as permitted by paragraph (a)(4) of this section, each time it appears in the labeling, e.g., on the outer carton, inner bottle label, and on any package insert or display material. If the "APPROVED USES" or a similar designation is used, the labeling involved shall appear within a boxed area.

(2) At the applicant's discretion, the "Indications" may be described in the boxed area together with other applicable labeling approved under the application or abbreviated application. If such other labeling is included, the boxed area shall be designated "APPROVED INFORMATION," not "APPROVED USES."

(3) The "Indications" information appearing in the boxed area shall be stated in the exact language approved in the application or abbreviated application. Other information, if included within the boxed area, also shall be stated in the exact language approved in the application or abbreviated application.

(4) At the applicant's discretion, the designation of the boxed area may read: "FDA APPROVED USES" or "FDA APPROVED INFORMATION," as appropriate, or "USES (or

"INFORMATION") APPROVED BY THE FOOD AND DRUG ADMINISTRATION," or other similar wording.

(5) As provided in § 314.70 of this chapter, portions of the labeling described in this paragraph may be adopted without prior FDA approval.

(b) The term "prominent and conspicuous location" as used in paragraph (a) of this section means that the labeling within the boxed or nonboxed area shall be presented and displayed in such a manner as to render it likely to be read and understood by the ordinary individual under customary conditions at both time of purchase and use.

(c) The discretionary provisions of paragraph (a) of this section will be permitted only after a final OTC drug monograph for the corresponding class of OTC drugs has been established under part 330 of this chapter. If a relevant OTC drug monograph is pending at the time an application is approved, an applicant will be so informed. In such case, the applicant shall use only the wording approved in the application to label the product, until the pending OTC drug monograph becomes final. If there is no corresponding class of OTC drugs pending under part 330 of this chapter, then the provisions of paragraph (a) of this section can be implemented when an application is approved or at any time thereafter.

**PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG**

5. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

6. Section 314.70 is amended in by adding new paragraph (d)(10) to read as follows:

**§ 314.70 Supplements and other changes to an approved application.**

\* \* \* \* \*  
 (d) \* \* \*  
 (10) If the alternate labeling authorized by § 310.104 of this chapter is the only change being made in the approved labeling.  
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Dated: November 2, 1993.  
 Michael R. Taylor,  
 Deputy Commissioner for Policy.  
 [FR Doc. 93-27501 Filed 11-8-93; 8:45 am]  
 BILLING CODE 4160-01-F

## 21 CFR Part 330

[Docket No. 92N-0175]

RIN 0905-AA06

**Labeling of Drug Products for Over-The-Counter Human Use; Technical Amendment**

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its alternative labeling policy for over-the-counter (OTC) drug products subject to an OTC drug monograph. This proposal involves nonsubstantive changes in wording and changes in the paragraph designations to make § 330.1(c) (21 CFR 330.1(c)) consistent with the alternative labeling policy for OTC drug products subject to an approved application or abbreviated application (hereinafter collectively called an application), proposed elsewhere in this issue of the *Federal Register*.

**DATES:** Written comments by January 10, 1994.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of May 1, 1986 (51 FR 16258), FDA issued a final rule in § 330.1(c)(2) (21 CFR 330.1(c)(2)) establishing alternate labeling for OTC drug products marketed under an OTC drug monograph. The final rule established three alternatives for the "Indications" portion of OTC drug labeling. The label and labeling of OTC drug products marketed under an OTC drug monograph are required to contain, in a prominent and conspicuous location, the "Indications" that have been established in a final monograph. At the option of the manufacturer, this labeling may be designated "APPROVED USES," or given a similar permitted designation. If the "APPROVED USES" designation is used, the labeling must appear within a boxed area. Other labeling in the monograph may also be placed within the boxed area, in which case the labeling is designated "APPROVED INFORMATION," rather than

"APPROVED USES." All information must be in the exact language established in the monograph. In addition, there must be a statement that the boxed information was published by FDA. In lieu of this latter statement, the designation of the boxed area may be modified to read "FDA APPROVED USES" or "FDA APPROVED INFORMATION," or similar wording.

As a second alternative, "Indications" labeling may contain other truthful and nonmisleading statements, describing only those indications for use that have been established in an applicable monograph. In this case, the "APPROVED USES" or "APPROVED INFORMATION" designation may not be used.

Under a third alternative, the labeling may meet the boxed area requirement, previously described, and in addition, use other truthful and nonmisleading substitute or alternate language describing indications for use. This additional language must appear elsewhere in the labeling (outside the boxed area).

In a proposed regulation published elsewhere in this issue of the *Federal Register*, the agency is proposing to extend this alternative labeling policy, in part, to OTC drug products subject to an application. That proposal would allow for the label and labeling of OTC drug products approved under an application to contain, in a prominent and conspicuous location, either: (1) The designation "APPROVED USES," together with the specific wording on indications for use established under an approved application, all of which must appear within a boxed area, or (2) the designation "APPROVED INFORMATION," together with the specific wording on indications for use and other applicable labeling (e.g., statement of identity, warnings, and directions) established under an approved application, all of which must appear within a boxed area.

In preparing the proposed regulation for OTC drug products subject to an application, the agency used the existing regulation in § 330.1(c) as a guide. The agency has made some revisions to the wording and paragraph designations in the proposal for alternative labeling for OTC drug products subject to an application so that the regulation would be clearer and easier to follow.

For clarity and consistency, the agency is also proposing to revise the regulation in § 330.1(c)(2)(i) to make it similar to the proposal in § 310.104 for OTC drugs subject to an application. These changes are nonsubstantive in nature.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12866, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The impact of the proposed rule, if implemented, appears to be minimal. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12866. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products. Comments regarding the impact of this rulemaking on OTC drug products should be accompanied by documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before January 10, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 330**

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 330 be amended as follows:

**PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED**

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 330.1 is amended by revising paragraph (c)(2)(i) and by adding new paragraph (c)(2)(vii) as follows:

**§ 330.1 General conditions for general recognition as safe, effective and not misbranded.**

\* \* \* \* \*

(c) \* \* \*  
(2)(i)(A) The label and labeling of the product contain in a prominent and conspicuous location the labeling describing the "Indications" that have been established in an applicable final monograph. At the discretion of the manufacturer, this portion of the labeling may be designated "APPROVED USES," or be given a similar designation as permitted by paragraph (c)(2)(i)(D) of this section, each time it appears in the labeling, e.g.,

on the outer carton, inner bottle label, and on any package insert or display material. If the "APPROVED USES" or a similar designation is used, the labeling involved shall appear within a boxed area.

(B) At the manufacturer's discretion, the "Indications" may be described in the boxed area together with other applicable labeling included in this subchapter and in subchapter C of this chapter. If such other labeling is included, the boxed area shall be designated "APPROVED INFORMATION," not "APPROVED USES."

(C) The "Indications" information appearing in the boxed area shall be stated in the exact language of the applicable monograph. Other information, if included within the boxed area, also shall be stated in the exact language where exact language had been established and identified by quotation marks in an applicable

monograph or by regulation (e.g., § 201.63 of this chapter).

(D) At the manufacturer's discretion, the designation of the boxed area may read: "FDA APPROVED USES" or "FDA APPROVED INFORMATION," as appropriate, or "USES (or "INFORMATION") APPROVED BY THE FOOD AND DRUG ADMINISTRATION," or other similar wording.

\* \* \* \* \*

(vii) The labeling of a drug product in accordance with the provisions of this section will be permitted only after a final OTC drug monograph for the appropriate class of OTC drugs has been established under part 330.

\* \* \* \* \*

Dated: October 20, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-27509 Filed 11-8-93; 8:45 am]

BILLING CODE 4160-01-F



# Federal Register

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Tuesday  
November 9, 1993

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## Part X

# Environmental Protection Agency

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40 CFR Part 82  
Protection of Stratospheric Ozone;  
Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 82****[FRL-4800-2]****Protection of Stratospheric Ozone****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** With this action, EPA is proposing baseline production and consumption allowances for chemicals that EPA has proposed to add to the list of class I ozone-depleting substances in a Federal Register notice published on March 18, 1993. These substances are methyl bromide and hydrobromofluorocarbons (HBFCs). EPA is now proposing baseline production and consumption allowances for producers and importers of methyl bromide and HBFCs derived from data submitted to the Agency in response to a section 114 data collection request issued on July 27, 1993. The data collection required companies to report the amounts of these substances that they produced, imported, exported, transformed or destroyed in 1991.

**DATES:** Unless a hearing is requested, written comments on this proposed rule will be accepted on or before December 9, 1993. If a hearing is requested, EPA will conduct a public hearing on this Notice of Proposed Rulemaking on November 24, 1993, and comments will be accepted until December 9, 1993. The hearing will convene at 10 a.m. and will adjourn at such time as necessary to complete the testimony. Any party desiring a public hearing must notify EPA by 5 p.m. Eastern Standard Time on November 19, 1993. If no party informs EPA that it wishes to testify, no hearing will be held and EPA will address only written submissions. Parties may contact the person listed below to determine whether a hearing will be held and the date the comment period will close.

**ADDRESSES:** Comments should be submitted in duplicate to the attention of Air Docket A-92-13 at: U.S. Environmental Protection Agency (LE-131) 401 M Street SW, Washington, DC 20460. The Docket is located in room M-1500, First Floor, Waterside Mall. Material relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Peter Voigt at (202) 233-9185, Program Implementation Branch, Stratospheric Protection Division, Office of

Atmospheric Programs, Office of Air and Radiation, 6205J, 401 M Street, SW., Washington DC 20460.

**SUPPLEMENTARY INFORMATION:**

- I. Background
  - A. Newly Listed Substances
  - B. Baselines Production and Consumption Allowances
- II. Statutory Authority
- III. Confidentiality of Information
- IV. Request for Comment
- V. Summary of Supporting Analyses
  - A. Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act

**I. Background****A. Newly Listed Substances**

EPA has proposed to add methyl bromide and HBFCs to the list of class I substances under section 602 of the Clean Air Act, 58 FR 15014 (March 18, 1993). As explained in the listing proposal, under title VI of the Clean Air Act, a newly listed substance is automatically subject to the section 604(a) phaseout schedule unless:

- (1) The Administrator accelerates that schedule pursuant to section 606; or
- (2) The Administrator determines that the section 604(a) schedule is unattainable and extends that schedule pursuant to section 602(d).

For reasons explained in the listing proposal, the Agency proposed that the section 604(a) schedule is unattainable for methyl bromide and proposed to extend that schedule under section 602(d) to a freeze until the termination date. EPA proposed freezing production and consumption levels of methyl bromide at 1991 levels beginning on January 1, 1994 until January 1, 2000, when production and consumption would be eliminated. For HBFCs, EPA proposed to freeze production and consumption at 1991 baseline levels beginning on January 1, 1994 until January 1, 1996, when production and consumption would be eliminated.

Section 607(a) of the Clean Air Act provides that the Administrator, by September 15, 1991, was to promulgate rules providing for the issuance of allowances for the production and consumption of class I and II substances and governing the transfer of such allowances. EPA promulgated those rules issuing allowances for then-listed substances on March 6, 1991 (56 FR 9518). Under EPA's rules, controls on the production and consumption of regulated substances operates through a company-specific allowance system. Companies are prohibited from production and consumption beyond the amount for which they hold unexpended allowances. See 40 CFR 82.4. Section 607 (b) and (c) further

specify that EPA's rules are to provide for trading of allowances on an ozone depletion weighted basis.

EPA's obligation to issue company-specific allowances is inherent in the allowance and trading scheme under the Act. As explained in the July 27 information collection request, the section 604 phaseout provision and the section 607 allowance and trading provision were drafted against the regulatory backdrop of EPA's implementation of the Montreal Protocol under authority existing prior to the Clean Air Act Amendments of 1990 (formerly section 151(b)). The Agency had implemented the Protocol production and consumption limits through company-specific allowances. See 53 FR 30566 (1989). Enactment of sections 604 and 607 continued this approach, and the Agency's current regulations comport with it. See regulation to implement 1992 and later production and consumption limits under section 604 (57 FR 33754, July 30, 1992). EPA must issue company-specific allowances for methyl bromide and the HBFCs in order to implement the production and consumption freeze applicable to those substances. EPA proposed this consistent approach for methyl bromide and the HBFCs in its March 18 notice, with baseline production and consumption allowances allocated to those companies engaged in such activities in the 1991 baseline year.

To establish these allowances, EPA exercised its information collection authority under section 114(a) of the Clean Air Act to require companies to submit information on the amount of methyl bromide and HBFCs that they produced, imported, exported, transformed or destroyed in 1991. 58 FR 40048 (July 27, 1993). EPA has used the information collected to calculate the company-specific production and consumption allowances.

**B. Baseline Production and Consumption Allowances**

EPA expects to take final action regarding its proposal to add methyl bromide and the HBFCs to the class I list of ozone-depleting substances in November 1993. EPA is proposing the company-specific production and consumption allowances for these substances now in order that EPA will be in a position to take final action establishing such allowances in time if EPA promulgates a production and consumption freeze for calendar year 1994.

A company's production allowances are equal to its domestic production minus the amount that is transformed



and destroyed by it or by other companies. Amounts of class I substances that are recycled are also excluded from the calculation of production allowances. For producers that also import, transformation is allocated proportionately between domestic production and imports. Second-party transformation not attributed to a specific producer is allocated proportionately among all producers.

Company-specific consumption allowances for each chemical consist of a company's production allowances, as calculated above, plus its imports, minus its exports. Amounts imported for transformation and for destruction are excluded from the import total. Exports that are not attributable to a specific company are proportionately allocated among all producers. In addition, imports of used and recycled ozone-depleting substances are excluded from the calculation of allowances.

## II. Statutory Authority

EPA is authorized by section 604(c) of the Act to promulgate regulations implementing the phaseout of ozone-depleting substances. Pursuant to section 607, the phaseout is to be implemented through an allowance system. At the same time, section 614(b) provides that title VI "shall not be construed, interpreted or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol." To the extent that additional or different regulations are needed to ensure compliance with the Protocol, the Administrator may promulgate such regulations under section 615, which provides broad authority to take action needed to protect stratospheric ozone. Finally, EPA has authority under section 301(a) of the Clean Air Act "to prescribe such regulations as are necessary to carry out his functions under this chapter."

As explained above, EPA must promulgate company-specific production and consumption allowances in order to implement controls on methyl bromide and the HBFCs under title VI of the Clean Air Act. In addition, such controls are necessary to implement the controls on these substances that will become mandatory under the Montreal Protocol beginning in 1995. The reader is referred to the March 18 notice for a full discussion of the Protocol Parties' agreement to controls on these substances at their Copenhagen meeting. See 58 FR 15014.

## III. Confidentiality of Information

Questions of business confidentiality regarding the promulgation of production and consumption allowances for methyl bromide and the HBFCs were discussed in detail in the section 114 data collection request published on July 27, 1993. A number of companies responding to this information request asserted claims of business confidentiality for the information submitted and commented on the prospective release of the information collected.

Commenters indicated that the number of companies that produce, import or export methyl bromide is quite small and that release of information on the production and consumption of methyl bromide would cause greater harm than would normally be the case. Commenters indicated that release of the information would: (1) Provide an unfair competitive advantage for non-domestic producers; (2) reveal information to competitors on a co-produced product; (3) decrease competition by disseminating market information in an industry with a limited number of producers; and (4) reveal information on the market shares of specific producers. Commenters requested that EPA waive the requirement to publicly disclose this information when establishing the baseline allowances.

Commenters further indicated that the information on methyl bromide should not be released before methyl bromide is listed as a controlled substance. It was stated that EPA does not have the authority to release information that is claimed to be CBI regarding a specific substance prior to issuing a final rule listing that substance.

EPA believes that the Clean Air Act compels the public disclosure of allowances for newly listed substances such as methyl bromide and the HBFCs. Congress specified that allowances be based on companies' individual production and consumption levels, and therefore it is likely that information that may otherwise be considered confidential will be released. Even prior to final action on the proposed listing of methyl bromide and HBFCs, the Agency believes it may propose production and consumption allowances in order that the allowances may be available in time if the Agency establishes a freeze beginning in 1994.

Pursuant to 40 CFR 2.301(g), in its July 27 notice EPA notified companies submitting data pursuant to the section 114 request that the Agency will consider making each company's allowances available to the public as

"relevant to a proceeding under the Act." As explained in the July 27 notice, section 114 of the Clean Air Act defines "proceeding" to include "any rulemaking \* \* \* conducted by EPA under the Act \* \* \*." See also 40 CFR 2.301(g)(4). EPA believes that section 114(c) of the Act authorizes disclosure of production and consumption allowances for each company for the newly listed substances, even if CBI is thereby disclosed. These allowances are a central component to the rulemaking to establish production and consumption limits for methyl bromide and HBFCs. EPA does not believe it must wait until the listing rulemaking is final before commencing the rulemaking to establish the allowances to implement the controls that follow from listing.

EPA recognizes the competitiveness concerns industry has raised, but does not believe these concerns warrant or allow withholding this information from the public. As explained in the July 27 notice, both the rulemaking requirements of section 307(d) of the Clean Air Act and the Administrative Procedure Act as well as the Clean Air Act's citizen suit provisions support disclosure of this information. Allowances to implement the title VI scheme must be published for comment in order to be legally binding and enforceable. The legislative history reflects Congress' intent that the allowances be subject to notice-and-comment procedures. See 136 Cong. Rec. S16947 (daily ad. Oct 27, 1990) (Chaffee-Baucus statement of Senate managers). Moreover, public disclosure of company-specific and chemical specific production and consumption allowances is necessary here for citizens to challenge violations of these limits.

Pursuant to 40 CFR 2.301(g), EPA's General Counsel has determined for the reasons described in the previous paragraph, that the production and consumption allowances are relevant to the rulemaking regarding the addition of methyl bromide and the HBFCs to the class I list, and the Office of Atmospheric Programs has determined that publication of the allocations at this time is in the public interest. The Agency has notified the affected companies at least five days prior to disclosure of this information. The Agency is therefore making this information public in connection with the proceedings to list methyl bromide and the HBFCs as class I substances and to assign production and consumption allowances for these chemicals.

**IV. Request for Comments**

EPA is requesting comments on the company-specific allowances proposed in this rulemaking. Companies that are anticipating receiving production and consumption allowances should review the allowances proposed. The recordkeeping and reporting requirements will be contained in final regulations governing section 604 of the Act. EPA expects to promulgate the final rule adding methyl bromide and the HBFCs to the class I list and governing recordkeeping and reporting in November, 1993.

**V. Summary of Supporting Analyses**

**A. Executive Order 12866**

Under Executive Order 12866 (58 FR 51735, 10/4/94), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not "significant" under the terms of Executive Order 12866 and is not subject to OMB review.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that federal

agencies examine the impact of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis. Such an analysis is not required if the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Administrator believes that this regulation, if promulgated, will not have a significant impact on a substantial number of small entities and has concluded that a formal regulatory flexibility analysis is unnecessary.

This proposed regulation seeks to establish allowance levels for the production and consumption of the newly listed class I ozone-depleting chemicals. Baseline allowances in and of themselves do not impose any adverse costs on producers or importers. As the administrative mechanism for implementing regulations the Agency expects to promulgate in November, the overall regulatory impacts on small business are impacts of the scheme as a whole and, thus are better addressed in that rulemaking. The Administrator certifies that this rulemaking will not have a significant impact on a substantial number of small entities, since the companies whose information is being disclosed are generally not small.

**C. Paperwork Reduction Act**

The information collection requirements governing the addition of newly listed substances to the list of class I ozone-depleting substances and the regulatory changes to section 604 of the Act has been submitted to OMB as required by section 35 D of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.* Comments regarding these requirements have been received and are being considered in the development of the final rule to implement changes in section 604.

The promulgation of the regulation establishing company-specific allowance levels will not generate additional recordkeeping and reporting requirements. As a result, no information collection request was prepared and submitted to OMB.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone.

Dated: November 4, 1993.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.5 is amended by adding two sentences to the end of the introductory text and by adding paragraphs (g) and (h) to read as follows:

**§ 82.5 Apportionment of baseline production allowances.**

\* \* \* Persons who in 1991 produced methyl bromide and hydrobromofluorocarbons (HBFCs) are apportioned baseline production allowances as set forth in paragraphs (g) and (h) of this section. Each person's apportionment of production allowances is equal to the person's 1991 production, less the 1991 amounts attributed to the person for transformation and destruction.

\* \* \* \* \*

3. Section 82.6 is amended by adding two sentences to the end of the introductory text and by adding paragraphs (g) and (h) to read as follows:

**§ 82.6 Apportionment of baseline consumption allowances.**

\* \* \* Persons who in 1991 produced, imported, or produced and imported methyl bromide and

hydrobromofluorocarbons (HBFCs) are apportioned baseline consumption allowances as set forth in paragraphs (g) and (h) of this section. Each person's apportionment of consumption

Controlled substance	Person	Allowances (kg)
(g) For Group VI controlled substances: Methyl Bromide .....	Great Lakes Chemical Corporation .....	19,949,500
	Ethyl Corporation .....	8,233,894
(h) For Group VII controlled substances: HBFC 22B1-1 .....	Great Lakes Chemical Corporation .....	46,211

allowances is equal to the person's 1991  
 production and imports less 1991  
 exports, transformation and destruction.

\* \* \* \* \*

Controlled substance	Person	Allowances (kg)
<b>(g) For Group VI controlled substances:</b>		
Methyl Bromide .....	Great Lakes Chemical Corporation .....	15,518,489
	Ethyl Corporation .....	6,379,906
	AmeriBrom Inc. ....	3,528,929
	TriCal Inc. ....	109,225
<b>(h) For Group VII controlled substances:</b>		
HBFC 22B1-1 .....	Great Lakes Chemical Corporation .....	40,110

[FR Doc. 93-27705 Filed 11-8-93; 8:45 am]

BILLING CODE 6540-50-P



# Federal Register

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Tuesday  
November 9, 1993

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Part XI

## The President

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Proclamation 6621—Veterans Day, 1993



Title 3—

Proclamation 6621 of November 5, 1993

The President

Veterans Day, 1993

By the President of the United States of America

**A Proclamation**

Veterans Day is a time for Americans to thank our Nation's military veterans for the sacrifices they have made to defend and preserve the blessings of liberty. During times of war and times of peace, these men and women have ensured that future generations would enjoy the life, liberty, and pursuit of happiness promised by our Nation's Founders. We have much to learn from all who have served.

In the major wars and numerous smaller conflicts fought by our Nation's Armed Forces, our men and women in uniform have shaped our Nation through their great sacrifices to safeguard our freedom. Through the War of Independence and the many wrenching conflicts of the 19th century, Americans preserved our Nation with their bravery and their commitment to duty and country. In the conflicts of our century, men and women in the Armed Forces have successfully defended our security, freedom, and ideals, helping to build America into a greater Nation.

On this day, we should pay special tribute to the more than 27 million living American veterans. Seventy-five years ago on November 11, the Armistice was signed, ending World War I, "the war to end all wars." More than 32,000 soldiers of the nearly 5 million who fought in World War I are still living, serving as a reminder of the struggles through which they secured our safety. Many more veterans from World War II and the Korean Conflict still serve their country as career soldiers and civilians, tempered with the experience of war. Vietnam veterans continue to help our Nation adjust to a new international security environment often characterized by regional conflicts similar to the war in which they fought.

Living veterans, having once served our country in uniform, now fill such key roles as teachers, police officers, business owners, doctors, lawyers, government officials, and volunteers, sustaining our society secured by their service.

In a greater sense, this day cannot fully honor America's veterans who have risked and sacrificed their lives. But we can resolve to continue the struggle for freedom that they made their duty and to dedicate our lives to ensuring that their valiant efforts shall never have been in vain.

In order that we may pay due tribute to those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Thursday, November 11, 1993, as "Veterans Day." I urge all Americans to honor the resolution and commitment of our veterans through appropriate public ceremonies and private prayers. I also call upon Federal, State, and local government officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, churches, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

*William Clinton*

[FR Doc. 93-27821  
Filed 11-8-93; 11:47 am]  
Billing code 3195-01-P



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**LIST OF PUBLIC LAWS**

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**S.J. Res. 78/P.L. 103-131**  
 Designating the beach at 53 degrees 53'51"N, 166 degrees 34'15"W to 53 degrees 53'48"N, 166 degrees 34'21"W on Hog Island, which lies in the Northeast Bay of Unalaska, Alaska as

"Arkansas Beach" in commemoration of the 206th regiment of the National Guard, who served during the Japanese attack on Dutch Harbor, Unalaska on June 3

and 4, 1942. (Nov. 1, 1993; 107 Stat. 1370; 1 page)  
H.R. 328/P.L. 103-132  
To direct the Secretary of Agriculture to convey certain lands to the town of Taos,

New Mexico. (Nov. 2, 1993; 107 Stat. 1371; 2 pages)  
H.J. Res. 228/P.L. 103-133  
To approve the extension of nondiscriminatory treatment with respect to the products of

Romania. (Nov. 2, 1993; 107 Stat. 1373; 1 page)  
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