7-8-91
Vol. 56 No. 130
Pages 30857-31042

# federal register

Monday
July 8, 1991

**Briefing on How To Use the Federal Register**
For information on a briefing in New Orleans, LA, see announcement on the inside cover of this issue.

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 56 FR 12345.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | 202-783-3238 |
| Magnetic tapes | 275-0186 |
| Problems with public subscriptions | 275-3054 |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | 783-3238 |
| Magnetic tapes | 275-0186 |
| Problems with public single copies | 275-3050 |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | 523-5240 |
| Magnetic tapes | 275-0186 |
| Problems with Federal agency subscriptions | 523-5243 |

**For other telephone numbers, see the Reader Aids section at the end of this issue.**

## 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 ORLEANS, LA

**WHEN:** July 23, at 9:00 am

**WHERE:** Federal Building, 501 Magazine St., Conference Room 1120, New Orleans, LA

**RESERVATIONS:** Federal Information Center 1-800-366-2998

# Contents

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

**Agricultural Marketing Service**
PROPOSED RULES
Lemons grown in California and Arizona, 30878, 30879 (2 documents)
Marketing orders; expenses and rates of assessment, 30881

**Agricultural Research Service**
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Del Monte Corp., 30896

**Agriculture Department**
*See also* Agricultural Marketing Service; Agricultural Research Service; Cooperative State Research Service; Food and Nutrition Service; Foreign Agricultural Service; Soil Conservation Service
NOTICES
Grant and cooperative agreement awards:
Langston University, 30897

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

**Blind and Other Severely Handicapped, Committee for Purchase From**
*See* Committee for Purchase From the Blind and Other Severely Handicapped

**Centers for Disease Control**
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—
American blood donors; epidemiology study to determine incidence, 30926

**Coast Guard**
RULES
Merchant marine officers and seamen:
Commercial vessel personnel; random chemical drug testing programs, 31030

**Commerce Department**
*See also* Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 30897, 30898 (3 documents)

**Committee for Purchase From the Blind and Other Severely Handicapped**
NOTICES
Procurement list; additions and deletions, 30904, 30905 (3 documents)

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
China, 30903

**Cooperative State Research Service**
NOTICES
Meetings:
Food and Agricultural Sciences Joint Council, 30896

**Defense Department**
*See also* Navy Department
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Mental health services, 30887
NOTICES
Freedom of Information Act (FOIA); implementation:
Defense Base Closure and Realignment Commission, 30906

**Education Department**
NOTICES
Grants and cooperative agreements; availability, etc.:
Education research and development centers program, 31014

**Energy Department**
*See also* Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Electricity export and import authorizations, permits, etc.:
Southern California Edison Co. et al., 30907
Meetings:
Nuclear Facility Safety Advisory Committee, 30908

**Environmental Protection Agency**
RULES
Air programs:
Stratospheric ozone protection—
Chlorofluorocarbons and halons; production and consumption; amendment; correction, 30873
NOTICES
Air programs:
Small business stationary source technical and environmental compliance assistance program (SBAP); staff work product availability and meeting, 30923
Superfund program:
Model CERCLA RD/RA consent decree, 30996
Toxic and hazardous substances control:
Premanufacture exemption approvals, 30923

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

**Family Support Administration**
*See* Refugee Resettlement Office

**Federal Aviation Administration**
RULES
Airports:
Passenger facility charges
Correction, 30867
PROPOSED RULES
Transition areas, 30883

NOTICES
Advisory circulars; availability, etc.:
Supplier surveillance procedures, 30958

**Federal Deposit Insurance Corporation**
NOTICES
Agency information collection activities under OMB review, 30924
Meetings; Sunshine Act, 30964
(2 documents)

**Federal Energy Regulatory Commission**
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Orange & Rockland Utilities, Inc., et al., 30908
Natural gas certificate filings:
Northern Natural Gas Co. et al., 30909
South Penn Gas Co. et al., 30911
Reporting and recordkeeping requirements:
Chief Accountant; new docket prefixes for letters, 30914
*Applications, hearings, determinations, etc.:*
South Georgia Natural Gas Co., 30915
Southern Minnesota Municipal Power Agency, 30914
Texaco Exploration & Production Inc., 30915
Transcontinental Gas Pipe Line Corp., 30916

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
Charleston County, SC, 30959

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 30925
(2 documents)
Freight forwarder licenses:
P.J. Whelan & Co. et al., 30926

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 30964, 30965
(2 documents)

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species permit applications, 30932

**Food and Nutrition Service**
NOTICES
Meetings:
Commodity Distribution National Advisory Council, 30896

**Foreign Agricultural Service**
RULES
Import licensing:
Sugar—
Re-exported in refined form, re-exported in sugar-containing products, and for production of polyhydric alcohol, 30857

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
Indiana, 30898

**Health and Human Services Department**
*See* Centers for Disease Control; Health Care Financing Administration; Health Resources and Services Administration; Refugee Resettlement Office; Social Security Administration

**Health Care Financing Administration**
NOTICES
Privacy Act:
Systems of records, 30927

**Health Resources and Services Administration**
NOTICES
Grants and cooperative agreements; availability, etc.:
Nurse practitioner and nurse midwifery programs, 30929

**Hearings and Appeals Office, Energy Department**
NOTICES
Cases filed, 30916
Special refund procedures; implementation, 30918

**Indian Affairs Bureau**
NOTICES
Agency information collection activities under OMB review, 30931

**Interior Department**
*See* Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service

**International Trade Administration**
NOTICES
Antidumping:
Coated groundwood paper from Belgium et al., 30898
Commercial microwave ovens, assembled or unassembled, from Japan, 30899
Pistachios, in-shell, from Iran, 30901
Synthetic methionine from Japan, 30901
United States-Canada free-trade agreement; binational panel reviews:
Iron construction castings from Canada, 30901

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 30965

**Interstate Commerce Commission**
RULES
Motor carriers:
Declaratory order petitions—
Yellow Freight System, Inc., 30873

**Justice Department**
*See* Parole Commission

**Labor Department**
*See* Pension and Welfare Benefits Administration

**Land Management Bureau**
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 30931
Meetings:
Albuquerque District Grazing Advisory Board, 30931
Realty actions; sales, leases, etc.:
Montana, 30932

**Minerals Management Service**
NOTICES
Outer Continental Shelf operations:
Western Gulf of Mexico—
Lease sale, 31016
Leasing systems, 31027

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings; Sunshine Act, 30965

**National Highway Traffic Safety Administration**
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Sonde, Theodore, 30962
Motor vehicle theft prevention standard; exemption petitions, etc.:
BMW of North America, Inc., 30959

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 30874
PROPOSED RULES
Fishery conservation and management:
Western Pacific precious corals, 30893
NOTICES
Permits:
Marine mammals, 30902, 30903
(3 documents)

**National Park Service**
NOTICES
Meetings:
Mississippi River Coordinating Commission, 30932
Mississippi River Corridor Study Commission, 30932
Upper Delaware Citizens Advisory Council, 30933
National Register of Historic Places:
Pending nominations, 30933

**National Science Foundation**
NOTICES
Meetings:
Biological and Critical Systems Special Emphasis Panel, 30943
Biotic Systems and Resources Special Emphasis Panel, 30943
Mechanical and Structural Systems Special Emphasis Panel, 30943
Ocean Sciences Review Panel, 30943
Physics Special Emphasis Panel, 30944

**Navy Department**
NOTICES
Environmental statements; availability, etc.:
Navy Broadway Complex Project, San Diego, CA; decision to redevelop, 30906

**Nuclear Regulatory Commission**
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 30944
Regulatory guides; issuance, availability, and withdrawal, 30944
*Applications, hearings, determinations, etc.:*
Southern California Edison Co. et al., 30944

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

**Pacific Northwest Electric Power and Conservation Planning Council**
NOTICES
Power plan amendments:
Northwest conservation and electric power plan, 30945

**Parole Commission**
RULES
Federal prisoners; paroling and releasing, etc.:
Drug offenses; "peripheral role" definition, 30868
Parole hearings; acquittals effect on admissable evidence, 30867
Searches of Federal parolees by U.S. Probation Officers, 30870
Solicitation offenses; rating guidelines, 30870
Special drug and alcohol aftercare treatment programs, 30872

**Pension and Welfare Benefits Administration**
NOTICES
Employee benefit plans; prohibited transaction exemptions:
American Information Technologies Corp., 30934
Givens Profit Sharing Plan and Trust et al., 30938

**Presidential Documents**
ADMINISTRATIVE ORDERS
Bulgaria; determination that trade agreement is in the interest of the U.S. (Presidential Determination No. 91-43 of June 24, 1991), 31037
Missile technology proliferation; authority delegations (Memorandum of June 25, 1991), 31041
Mongolia; determination that trade agreement is in the interest of the U.S. (Presidential Determination No. 91-44 of June 24, 1991), 31039

**Public Health Service**
*See* Centers for Disease Control; Health Resources and Services Administration

**Refugee Resettlement Office**
NOTICES
Grants and cooperative agreements; availability, etc.:
Services to refugees discretionary program, 30968

**Resolution Trust Corporation**
NOTICES
Coastal Barrier Improvement Act; property availability:
Dacus Farm, TX, 30946
DeBordieu Colony, SC, 30946
Flying Raven Ranch, CO, 30947
Friedrich Tract, TX, 30947
Long Bayou, FL, 30948
Rolling Hills I & II, CA, 30948
Wen-Clay Land, TX, 30949
Meetings; Sunshine Act, 30965

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 30949–30951
(5 documents)

Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 30953
National Securities Clearing Corp. et al., 30951
New York Stock Exchange, Inc., 30954
Options Clearing Corp., 30956
Philadelphia Stock Exchange, Inc., 30957
*Applications, hearings, determinations, etc.:*
Public utility holding company filings, 30958

**Social Security Administration**
**PROPOSED RULES**
Supplemental security income:
Parent-to-child deeming; income calculations revisions, 30884

**Soil Conservation Service**
**NOTICES**
Environmental statements; availability, etc.:
Ohio County Board of Education, WV, 30897

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Trade Representative, Office of United States**
**NOTICES**
European Economic Community:
Termination of quantitative restrictions on certain imports, 30945

**Transportation Department**
*See* Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

**Treasury Department**
**NOTICES**
Agency information collection activities under OMB review, 30962
Boycotts, international:
Countries requiring cooperation; list, 30962
Meetings:
Debt Management Advisory Committee, 30962

**Veterans Affairs Department**
**PROPOSED RULES**
Adjudication; pensions, compensation, dependency, etc.:
Disability or death from hospitalization, medical, or surgical treatment, 30893

---

**Separate Parts In This Issue**

**Part II**
Department of Health and Human Services, Office of Refugee Resettlement, 30968

**Part III**
Environmental Protection Agency, 30996

**Part IV**
Department of Education, 31014

**Part V**
Department of the Interior, Minerals Management Service, 31016

**Part VI**
Department of Transportation, Coast Guard, 31030

**Part VII**
The President, 31037

---

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Administrative Orders:**

Memorandums:

June 25, 1991.....31041

Presidential Determinations:

No. 91-43 of June 24, 1991.....31037

No. 91-44 of June 24, 1991.....31039

**7 CFR**

1530.....30857

**Proposed Rules:**

910 (2 documents).....30878, 30879

916.....30881

917.....30881

**14 CFR**

158.....30867

**Proposed Rules:**

71.....30883

**20 CFR**

**Proposed Rules:**

416.....30884

**28 CFR**

2 (5 documents).....30867-30872

**32 CFR**

**Proposed Rules:**

199.....30887

**38 CFR**

**Proposed Rules:**

3.....30893

**40 CFR**

82.....30873

**46 CFR**

16.....31030

**49 CFR**

1051.....30873

1220.....30873

**50 CFR**

672.....30874

675.....30874

**Proposed Rules:**

680.....30893

# Rules and Regulations

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

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.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### 7 CFR Part 1530

### Sugar To Be Re-exported in Refined Form, Sugar To Be Re-exported in Sugar Containing Products, and Sugar for Production of Polyhydric Alcohol

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

**ACTION:** Final rule.

**SUMMARY:** On October 9, 1990, the Department of Agriculture promulgated an interim rule (55 FR 41487) to renew and revise three programs—"Sugar To Be Re-exported in Refined Form" (7 CFR 1530.100 et seq.), "Sugar To Be Re-exported in Sugar Containing Products" (7 CFR 1530.200 et seq.), and "Sugar for Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.)—that were in effect under the prior sugar import quota. The interim rule amended the previous regulations governing these programs primarily in order to conform the regulations to the provisions of the Harmonized Tariff Schedule of the United States (HTS), as modified by Presidential Proclamation No. 6179 of September 13, 1990 (55 FR 38293) which converted the former absolute quota into a tariff-rate quota, but also to provide additional safeguards in the administration of these programs, to update or clarify former provisions, and to consolidate in one part of the CFR all of the regulations governing the programs referred to above.

Interested persons were initially provided 30 days to submit written comments concerning the interim rule, and this period was extended for an additional 30 days. This final rule addressed the comments received in response to the interim rule and makes several modifications of the regulations.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Cleveland Marsh, Team Leader, Import Quota Programs, Foreign Agricultural Service, Room 6095, South Building, U.S. Department of Agriculture, Washington, DC 20250; telephone number: 202-447-2916.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

The Administrator, Foreign Agricultural Service (FAS), certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are not a substantial number of small entities which participate in these programs. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601). It has been determined by an environmental evaluation that this action will not have any significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

The paperwork and recordkeeping requirements imposed by this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. OMB has assigned approval number 0551-0015 for this information collection.

Public reporting burden for this collection of information is estimated to average 68 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0015), Washington, DC 20503.

These programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

### Background

Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for raw cane sugar described in subheading 1701.11.02 of the Harmonized Tariff Schedule of the United States (HTS) to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota, and exempt from the quota limitations otherwise applicable to sugars imported at such lower duty rates: *Provided* That such sugar is used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or is re-exported in refined form or in sugar containing products: Provided further, That duties paid at the higher duty rates are not refunded, as drawback, on the basis, or as a result, of the exportation of such polyhydric alcohol, refined sugar or sugar containing products. In response to Proclamation No. 6179, the Secretary of Agriculture promulgated an interim rule on October 9, 1990 (55 FR 41487) to amend the regulations governing three programs that were in effect under the former absolute import quota: Sugar to be Re-exported in Refined Form, Sugar to be Re-exported in Sugar Containing Products, and Sugar for Production of Polyhydric Alcohol.

Interested persons were provided 60 days to submit written comments concerning the interim rule. All comments, and portions of comments, received in response to the interim rule are addressed in this final rule as follows:

**Subpart A—Sugar To Be Re-exported in Refined Form**

(a) *Comment:* One comment was received that the definitions of "Notice of Transfer" in §§ 1530.100(n) and 1530.200(n) should be amended to change the word "delivery" to "shipment" in order to eliminate an argued inconsistency between these definitions and those for "Date of Transfer" in §§ 1530.100(e) and 1530.200(f) resulting in confusion in the determination of the date of transfer.

*Response:* The date of transfer as defined in §§ 1530.100(e) and 1530.200(f) is used by the Licensing Authority in determining whether a refiner has complied with the time limit under §§ 1530.102(b), 1530.106(b), and 1530.204(b) for transferring sugar to a manufacturer and whether a manufacturer has complied with the time limit under § 1530.202(b) for exporting sugar containing products. For such purposes, sugar is considered to have been transferred as of the date of shipment by the refiner. The Notice of Transfer, by contrast, is documentation, signed by both the refiner and the manufacturer, attesting to the actual delivery of transferred sugar to the manufacturer. The programs require that sugar is in fact delivered, and compliance cannot be assured unless the sugar is actually received by the manufacturer. Accordingly, the distinction between shipment and delivery in the two definitions is necessary. FAS has determined that no change in these definitions is warranted.

(b) *Comment:* Several similar comments were intended to relieve refiners from any responsibility for claims for drawback of higher tier duties with respect to sugar transferred to a manufacturer of sugar containing products by deleting the phrase "or any sugar containing product manufactured with the use of such transferred sugar" from various provisions of the regulations. One such comment proposed deleting the phrase from § 1530.101(a)(5)(iii), which requires that an applicant for a license certify that it will not request credit on the license for the exportation or transfer of any refined sugar, if the exportation of such refined sugar or any sugar containing product manufactured with the use of such transferred sugar has resulted in, or has been used as the basis of a claim by the licensee or any other person for, a refund, as drawback, or any second tier duties paid on the importation of any sugars, syrups or molasses. Another comment requested that the phrase be deleted from § 1530.102(d), which generally requires that a licensed refiner reserve all rights, if any, to claim drawback refunds with respect to the exportation or transfer of refined sugar under this program and prohibits credits on a license if any refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS is claimed or received on the basis, or as a result, of the exportation of such refined sugar or any sugar containing products manufactured with the use of such transferred sugar. Another comment proposed deleting the phrase from § 1530.105(c) which requires a licensee to provide a written notification to the Licensing Authority whenever the licensee knows or has reason to know that any claim has been made, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar or of sugar containing products produced from sugar transferred by the licensee.

*Response:* FAS agrees that a refiner should not be held responsible for drawback claims made by a manufacturer who holds a polyhydric alcohol or sugar containing products license, if the refiner has done nothing to aid or assist the making of such drawback claims. However, FAS has been informed by the U.S. Customs Service that pursuant to 19 CFR 191.65 a manufacturer would not be permitted to claim drawback of duties paid on imported sugar that is subsequently refined, transferred, and incorporated in other products without a certificate of delivery provided by a refiner. Thus, a refiner can prevent such drawback claims by refusing to provide the necessary documentation and can take such additional precautions as it deems necessary when negotiating the terms of its contractual relationships with manufacturers. The Licensing Authority does not intend to enforce these provisions against refiners in instances of fraudulent claims by a manufacturer without any participation of a refiner. Therefore, FAS does not agree to these changes.

(c) *Comment:* Several additional comments were also intended to relieve refiners from any responsibility with respect to drawback claims by persons not acting as agents of the refiners.

*Comment:* One such comment proposed that the phrase "acting as agent for the licensee" should be inserted after the word "person" in § 1530.105(a)(1)(vi), which requires that the licensee's certification of export include "the entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in (the second tier subheadings of the tariff-rate quota) on the basis, or as a result, of the exportation of the refined sugar and the amount of such refund* * *."

*Response:* FAS disagrees with this proposed change. A licensee, as a party to a drawback contract with the U.S. Customs Service, is in a position to control the making of drawback claims (which would require proof that the sugar had been refined in the United States) and is required by § 1530.102(d) to reserve all rights, if any, to claim drawback refunds with respect to the exportation of refined sugar under this program. Moreover, the reporting of this information is needed by FAS in order to coordinate with the U.S. Customs Service in monitoring compliance with the requirements of additional U.S. note 3(c) to chapter 17 of the HTS. Accordingly, FAS expects licensed refiners to supply such information even if the drawback claims are made by persons not standing in the legal relationship of agent of the refiner.

*Comment:* Another comment was proposed that § 1530.105(a)(1)(vii) be amended to add, after the word "received", the phrase "by licensee or its agent." This provision requires that the certification of export include "a statement that the sugar has been exported from the customs territory of the United States, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in (the second tier subheadings of the tariff-rate quota) has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar."

*Response:* FAS rejects this proposed change for the reasons given in the response to the previous comment.

*Comment:* A further comment proposed inserting in § 1530.105(c), after the word "person," the words "as agent for the licensee" and deleting the phrase "or sugar containing products produced from sugars transferred from the licensee to a manufacturer, under the provisions of subpart B of this part." This section provides as follows:

(c) Notice of drawback claims. Whenever the licensee knows or has reason to know that any claim has been made, by the

licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1702.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or of sugar containing products produced from sugar transferred from the licensee to a manufacturer, under the provisions of subpart B of this part, the licensee shall within 5 business days provide a written notification to the Licensing Authority. This notification shall include the following information, if known or reasonably believed to be true by the licensee: * * *.

*Response:* This requirement applies only if the refiner knows or has reason to know of a drawback claim for the refund of second tier duties. If such a claim is made by a manufacturer of sugar containing products or by any other person not acting as the agent of the refiner, the refiner is obligated to report the claim only if the refiner has actual knowledge of the claim or has reason to know of it. FAS anticipates that these circumstances will exist if a refiner participates in preparing or furnishing information or documentation needed to complete the drawback claim. Accordingly, FAS rejects these proposed changes.

*Comment:* Yet another comment proposed inserting the phrase "as agent for the licensee" after the word "person" in § 1530.109(a)(7), which requires that a licensee retain records of "any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in * * * (the HTS subheadings subject to the tariff-rate quota) on the basis, or as a result, of the exportation of the refined sugar (exported under the provisions of this program) and the amount of any such refund paid."

*Response:* Once again, FAS believes that a refiner is in a position to control the making of drawback claims against the refiner's drawback contract and should retain records of such claims regardless whether the person making the claims stands in the legal relationship of agent to the refiner. Of course, if claims were made pursuant to the refiner's drawback contract by an unrelated third party using fraudulent documentation and without any knowledge or assistance by the refiner, FAS would not expect the refiner to possess or retain records of such claims.

(d) *Comment:* One comment proposed that, after the "United States," the phrase "by the licensee or its agent" be inserted in § 1530.107(d) which provides that the Licensing Authority may revoke any credit previously made to a license if it is determined that sugar exported under this program is "re-exported or returned to the customs territory of the United States without having undergone a substantial transformation."

*Response:* FAS rejects this proposed change. In order for this program to operate properly, FAS must be assured that the refined sugar exported and credited to a license will not be re-entered into U.S. customs territory. Any person attempting to re-enter goods that had previously been exported from the United States would need to rely on the cooperation of the manufacturer and exporter in order to complete the re-entry process under 19 CFR 10.1. Accordingly, a licensee and its agent are normally in a position to prevent the return to the United States, by third parties, of refined sugar exported under this program.

(e) *Comment:* Five comments were received which requested that §§ 1530.102(b) and 1530.106(b) be amended to change from 45 days to 90 days the time limit refiners have to transfer sugar to manufacturers of sugar containing products. All the comments referred to the administrative and scheduling burdens that would be imposed on refiners by limiting the time they have to transfer sugar to manufacturers to 45 days.

*Response:* The 45-day limit applicable to such transfers was originally established as part of a compression to within 1 year of the overall time frame for manufacturers to receive refined sugar (45 days), manufacture and export sugar containing products (180 days), and claim drawback (90 days). The compressed overall time frame was intended to facilitate timely processing by the U.S. Customs Service of suspended entries and monitoring by both FAS and Customs of compliance with the conditions established in additional U.S. note 3(c) to chapter 17 of the HTS. After several months of tariff-rate quota administration, FAS and the U.S. Customs Service are now satisfied that the level of cooperation and monitoring mechanisms are such that imports can be tracked sufficiently to assure program compliance. For example, FAS is altered to imports of high duty sugar within hours of an importation. The time frame does not need to be so tight; accordingly, FAS agrees to this change.

(f) *Comment:* One comment was received that § 1530.105(b) should be changed to allow 180 days for the filing of drawback claims.

*Response:* These regulations do not address the time limit for filing drawback claims, a subject which falls under the jurisdiction of the U.S. Customs Service. Therefore, FAS has determined that this change is not appropriate.

(g) *Comment:* One comment was received that § 1530.102(c) should be changed to enable the Licensing Authority to increase the maximum quantity of sugar which may be brought into the United States under a given license by up to an additional 50,000 metric tons, based on the prior history and demonstrable need of the licensee.

*Response:* Section 1530.112 authorizes the Licensing Authority to temporarily increase the maximum amount of a license, if such modification is necessary or appropriate under unusual, unforeseen or extraordinary circumstances and will not frustrate the purposes of the program and if compliance with the relevant provisions of HTS subheading 1701.11.02 and additional U.S. note 3 is established to the Licensing Authority's satisfaction. This provision is sufficient to increase the size of the license if necessary. Therefore, FAS has determined that this proposed change is not necessary.

(h) *Comment:* One comment proposed deleting the phrase "provided that such actions are taken in the name of the licensee" from § 1530.102(f), based on the manner in which normal business operations occur. The commentor stated that typically a refiner's customer, acting as agent for the refiner for purposes of the program, makes the export and is the exporter of record. The agency relationship is confirmed in writing and the agent certifies to the Licensing Authority that the sugar is exported.

*Response:* FAS agrees to this change.

(i) *Comment:* Several comments were received about § 1530.103, which provides for bond requirements. Specifically those comments were:

*Comment:* One comment was received that the last line in § 1530.103(e) should be deleted and replaced with the phrase "which the licensee is authorized to import under the license." The commentor believed that the existing language would cover all sugars imported, in the aggregate, whether or not the charge for any imported sugar had been offset by a credit for transferred or exported sugar.

*Response:* FAS intends that the bonding requirement be limited to the amount of sugar carried on the license at any particular point in time, and not, as is stated in the comment, the aggregate amount of sugar imported by the license. Section 1530.103(f) provides for releasing the bond requirement by an amount

corresponding to credits on the refiner's license. The Licensing Authority has never required a bond in excess of the amount of sugar imported (debited) on the license before exports or transfers (credits) occur. This will continue to be the practice. Moreover, the proposed language would appear to require a bond in an amount equal to 20¢ per pound times the maximum amount (in pounds) of the license. Therefore, FAS has determined that this change is not necessary or desirable.

*Comment:* One comment was received that § 1530.103(f) should be changed to read "Obligations under the bond will be released for the quantity of sugar credited to the license in accordance with § 1530.107." The commentor expressed the view that if the sugar is credited in accordance with the regulations, there should be no need to repeatedly get specific release from the Licensing Authority.

*Response:* Prior to implementation of the tariff-rate quota, FAS credited licenses upon receipt of proper certification and documentation of export. Presidential Proclamation No. 6179 created the additional condition that reexport licenses may not be credited for the exportation of any refined sugar, polyhydric alcohol, or sugar containing products if any second-tier duties are refunded, as drawback, on the basis of such exportation. Since exporters are allowed up to 90 days from the date of export to file such drawback claims, FAS will not be able to finally credit licenses until the 90-day period has expired and the Licensing Authority is satisfied that such drawback claims have not been made. However, FAS will amend § 1530.107—and will amend the corresponding provisions of §§ 1530.206(b) and 1530.306(b)—to allow the grant of a conditional credit to a license upon receipt of proper certification of export, prior to the expiration of the 90-day period, subject to final action to grant or deny the credit upon expiration of the 90-day period. A bond will not be released until a final credit has been entered on the license. Therefore, FAS has determined that the proposed change is not appropriate.

*Comment:* One comment was received proposing that in § 1530.103(g) the phrase "or if such a credit initially granted is subsequently revoked" should be deleted and in line 15, after the word "before", the words "the date of entry of the sugar or the last market day before" should be added. The commentor noted that the bond cannot be reinstated after it has been released and that this circumstance is already dealt with in § 1530.110 of the regulations.

*Response:* FAS recognises that once an obligation under a bond has been released it cannot be reinstated. However, as discussed above in response to the previous comment, the release of the bond is not automatic. There are circumstances where a claim against a bond could occur after the initial grant of a conditional credit to a license has been made but before the bond has been released. FAS has therefore determined that this change is not appropriate. FAS agrees with the second proposed change to add the phrase "the date of entry of the sugar or the last market day before" in line 15. It appears that this language was inadvertently omitted when the interim rule was published.

(j) *Comment:* One comment proposed amending § 1530.107(b) to provide that only a copy of the license is required to be submitted for purposes of crediting the license. The commentor noted that although the original license must be presented to the U.S. Customs Service for engrossing the quantity of imported sugar entered on the license, only a copy of the license must be sent to FAS. (See subsections (b) and (c) of § 1530.104.) The commentor further noted that none of the regulations specifically require the physical transfer of the original license after each importation and exportation and argued that the previous practice of FAS in requiring submission of the original license as engrossed by Customs in connection with each charge and credit was unduly burdensome. The commentor recommended that FAS accept copies of the license for all purposes related to maintaining license balances and acknowledge these receipts with copies of FAS's records.

*Response:* With the relaxation of the documentation requirements for proof of export discussed below, it is even more essential that FAS see the original license for debiting operations. Copies of documents too easily can hide tampering; if FAS does not examine the original license at least once in the import/export cycle it cannot be assured that all program requirements have been satisfied. In any event, by accepting copies of the license for purposes of crediting licenses, FAS has attempted to relieve some of the burden assumed by participants in the program. Accordingly, FAS has determined that this change is not desirable and rejects the proposed change.

(k) *Comment:* A comment was received that FAS should establish a computer network that would enable refiners to electronically transmit data on entries, transfers and exports for purposes of crediting and debiting licenses, with documentation to be mailed or telefaxed.

*Response:* FAS will actively explore this idea but for budgetary reasons is not able to implement such a system at this time.

(l) *Comment:* One comment was received that proposed deleting from § 1530.106(d) the phrase "as specified on the application for a license; however, the combined total of such transfers may not exceed the maximum license amount." There is no reference to this in § 1530.101, Application for a License.

*Response:* FAS agrees that there is no reference to transfers of sugar on the application for a license; however, the combined total of transfers and exports cannot exceed the maximum license amount. Therefore, FAS agrees to delete the words "as specified on the application for a license".

(m) *Comment:* One comment was received that in § 1530.107(a) the phrase "as of" should be changed to "on" and the words "when the licensee submits the information required by § 1530.104" should be deleted. Section 1530.107(a) provides:

> (a) Charges will be made to a license, effective as of the date of entry, for quantities of sugar (adjusted on the basis set forth in paragraph (c) of this section to determine raw value) entered under the license, when the licensee submits the information required by § 1530.104 or when the Licensing Authority otherwise determines that the licensee has made an entry under subheading 1701.11.02 of the HTS.

*Response:* In order for FAS to accurately track the import operations of licensees, it is necessary that the information specified in § 1530.104 be provided to the Licensing Authority. Therefore, FAS has determined that this change is not appropriate.

(n) *Comment:* One comment proposed that in § 1530.107 subsection (b)(2) should be changed to subsection (b)(3) and a new subsection (b)(2) should be inserted, to read as follows: "Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which a Notice of Transfer has been submitted to the Licensing Authority in accordance with § 1530.106 of this subpart."

*Response:* FAS inadvertently left transferred sugar out of the interim rule. FAS agrees to this change.

(o) *Comment:* One comment was received that in § 1530.109(d) the phrase "valueless sugar was lost or destroyed," should be deleted and the phrase "sugar was lost or destroyed or otherwise disposed of to render exportation or

transfer impossible or unnecessary," should be substituted in its place. The commentor noted that "valueless sugar" is not referred to elsewhere in subpart A.

*Response:* FAS agrees to this change in order that this language parallel that of § 1530.107(b)(2).

(p) *Comment:* One comment was received that deleting the reference in § 1530.109(d) to "drawback of duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the refined sugar". The commentor argued that it is impossible for records to "establish" that drawback was not claimed.

*Response:* While it may be true that the records required to be retained alone cannot establish that drawback of second tier duties was not claimed, such records can form part of the proof that such a drawback claim was or was not made. Therefore, FAS has determined that this change is not appropriate.

(q) *Comment:* One comment was received that pursuant to § 1530.110(a) a refiner is subject to liquidated damages in an amount up to 3 times the difference between the No. 11 and No. 14 contract prices. Under the sugar containing products program (see § 1530.209(a)) and the polyhydric alcohol program (see § 1530.303(g)) licensees are only subject to liquidated damages of up to 1.5 times the difference between the No. 11 and No. 14 contract prices. The commentor proposed that liquidated damages should be imposed at the same rate for all licensees, preferably at a multiple of 1.5 times the price difference in each case.

*Response:* FAS agrees that the assessment of liquidated damages should be consistent across all three programs and, upon further review of this matter, believes that the multiplier should be discontinued. Accordingly, FAS will amend the regulations to establish the amount of liquidated damages at simply the difference between the Nos. 11 and 14 NYCSCE contracts times the amount of sugar involved in the violation. This change applies to §§ 1530.110(a), 1530.103(g), 1530.110(b), 1530.203(g), 1530.209 (a) and (b), 1530.303(g) and 1530.309 (a) and (b).

(r) *Comment:* One comment was received proposing that in § 1530.110(b) the word "the" in line 10 should be changed to "any" and, in line 15, after the word "person" the phrase "as agent for the licensee" should be added. Section 1530.110(b) currently provides, in relevant part, as follows:

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of *the* refined sugar, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other *person*, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for up to 3 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported. (Emphasis added.)

*Response:* Because of the substitutability of sugar, FAS agrees that the first change is appropriate as well as corresponding modifications to §§ 1530.209(b) and 1530.309(b). The experience of the Operation Bittersweet investigation reveals that even though there may be no legal agency relationship between a licensee and a person who has filed fraudulent drawback claims with respect to re-export sugar sold on the U.S. domestic market, it is appropriate that if a violation is detected, the Licensing Authority have the option of assessing liquidated damages. If the Licensing Authority were satisfied that a licensee had not participated in any manner in a fraudulent scheme to violate the provisions of these regulations or additional U.S. note 3 to chapter 17 of the HTS, this certainly would be taken into account in determining whether to assess liquidated damages. However, ultimately licensees are obligated to assure that, with respect to raw sugar entered at first tier duty rates, the exportation of corresponding refined sugar under the program does not result in the refund of second tier duties. Accordingly, FAS has determined that this change is not appropriate.

(s) *Comment*: One comment was received with respect to § 1530.110(c) that proposed deleting the word "other" and changing the word "the", in line 25, to "such". Section 1530.110(c) provides as follows:

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirements of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that refiner. The Licensing Authority may suspend or revoke a license if claims are filed under 19 CFR part 191 for the refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or if any *other* claim under 19 CFR part 191 is denied on the basis that *the* refined sugar was not exported. (Emphasis added.)

*Response:* These changes serve to tighten the regulation and are therefore determined by FAS to be appropriate.

**Subpart B—Sugar To Be Re-exported in Sugar Containing Products**

(a) *Comment*: Twelve comments were received that the 180-day time limit in § 1530.202(b) for the manufacture and re-export of sugar containing products is insufficient from a business operational standpoint. Commentors requested that the former 18-month time limit be reinstated.

*Response*: FAS agrees to this change. FAS believes that newly established monitoring methods will enable the Licensing Authority to assure that program requirements will be met.

(b) *Comment*: One comment was received that the maximum license amount (10,000 short tons) in § 1530.202(c) should be reduced to 5,000 short tons to achieve tighter control over the amount of world price sugar entering the United States.

*Response*: While FAS agrees that a reduction in the license size would lessen the risk that sugar imported for purposes of this program would be diverted onto the domestic market, there will be sufficient controls in place to track license operations under these final regulations without restoring to reducing the license size. Therefore, FAS has determined that this change is not necessary.

(c) *Comment*: Two comments were received concerning the elimination from § 1530.202 of the direct import license, which previously permitted a manufacturer of sugar containing products to be an importer of re-export raw sugar and, thereby, to claim drawback where applicable. The commentors argued that this change leaves manufacturers totally subject to the license levels and "whims" of sugar refiners as to their ability to take in re-export raw sugar and complicates the procedure whereby sugar moves onto a refiner's license, then off the license

onto a manufacturer's license, then, off that license when the exportation occurs. Additionally, for sales to the Army and Air Force Exchange Service manufacturers have given them the drawback paper for their use in reducing the cost of the products they purchased, which may possibly put the manufacturers in a different competitive situation. The commentors proposed that FAS should return to the previous rules where sugar containing product manufacturers could be importers of record for re-export raw sugar.

*Response*: For program administration reasons, FAS has determined that licensees can no longer be allowed to directly import sugar for re-export. New conditions imposed by Presidential Proclamation No. 6179 require that FAS track not only imports and exports but also drawback claims. The elimination of direct import licenses makes the tasks of tracking sugar imports and drawback claims considerably easier due to the much small number of refiners than manufacturers participating in these programs. In addition, FAS has regularly and effectively dealt with the problem of entering sugar on a refiner's license, transferring that sugar to a manufacturer's license, and crediting the manufacturer's license when the sugar was exported in the form of sugar containing products. Finally, abolishing the direct import license puts all manufacturers on an equal competitive footing with respect to sales to military exchanges. Therefore, FAS has determined that this change is not appropriate.

(d) *Comment*: One comment was received concerning the requirements in §§ 1530.202(d) and 1530.205(a)(1)(viii) with respect to reserving drawback rights that the licensee should not be required to reserve drawback rights for each exportation debited on the license; rather, the reservation of drawback rights should be made once when the license is issued.

*Response*: Additional U.S. note 3 to chapter 17 of the HTS requires that credit not be granted on a license for the exportation of any sugar containing product if any duties imposed on the entry of sugar at the second tier rates of the tariff-rate quota are refunded, as drawback, on the basis, or as a result, of any such exportation. Since licensees under the Sugar to be Re-exported in Refined Form Program are required to reserve drawback rights with respect to sugar transferred to licensees under this program, ultimately manufacturers will acquire sugar duty drawback rights, if at all, only with respect to other imported sugar that has not been so transferred. Because most of the documentation submission requirements for proof of export are relaxed in this final rule, FAS has determined that it is necessary to require the licensee to reserve, and to certify to the reservation of, drawback rights with respect to each export of sugar containing products. Therefore, this change is inappropriate.

(e) *Comment*: Two comments were received that the time limit of 95 days from the date of transfer, in § 1530.203(g), for a licensee to qualify for a credit to its license and avoid a claim on its bond conflicts with the 180 days allowed for a licensee to manufacture and re-export transferred sugar.

*Response:* FAS acknowledges that the 95-day time limit was in error. However, since the time limit for manufacturing and exporting sugar containing products is being extended to 18 months, this provision will be amended to provide for payment under the bond if a credit has not been granted within 95 days of the date of exportation of the sugar containing products or the last date on which such products should have been exported, whichever occurs first.

(f) *Comment:* Nine comments were received that in § 1530.204(b) the 45-day time limit for the transfer of sugar from a refiner to a manufacturer was too short from a business operational standpoint. Most commentors proposed that the time limit should be returned to 90 days, as in the previous regulation. One comment suggested a 120-day limit for transfer.

*Response:* FAS agrees to a 90-day time limit. Since transfers were made within 90 days under the previous program, it does not appear necessary to allow 120 days.

(g) *Comment:* Nine comments were received that the requirements for written certifications in § 1530.205(a) are acceptable. However, eighteen comments were received that the requirement in § 1530.205(a)(2) to submit an original, certified Customs Form 7512 would be an unusually costly and operationally burdensome requirement, and that the Customs Form 7512 is ill suited for use as a proof of export. It was also suggested that an audit procedure be substituted for the documentation requirements.

*Response:* After lengthy consultations between the Licensing Authority and the U.S. Customs Service and FAS Compliance Review staff, FAS has determined that an audit procedure can be established whereby licensees will be required to provide, for auditing purposes, documentation for specific credits to licenses as proof of export, upon demand of the Licensing Authority. This will allow FAS to eliminate the requirement that documentation accompany each export certification submitted to the Licensing Authority as currently provided for in § 1530.205 (a)(2) and (b). Section 1530.205 will be amended to delete the documentation requirement, and a corresponding change will be made to § 1530.105 of the regulations governing the program for Sugar to be Re-exported in Refined Form. In addition, §§ 1530.208 and 1530.109, with respect to record-keeping requirements, will be amended to clarify that the records previously required to be submitted to FAS in connection with each certification of export will be required to be kept by the licensee and provided to FAS upon demand of the Licensing Authority.

(h) *Comment:* Eleven comments were received that the 95-day time limit to obtain credit for an export, in § 1530.205(b), is too restrictive and that the time limit should be extended to 180 days. One comment suggested an extension to 270 days.

*Response:* With the change in § 1530.205(a)(2) discussed above, the submission of the certification in accordance with § 1530.205(a) can be achieved within the 95-day time limit provided for in § 1530.205(b). Therefore, FAS has determined that this change is not necessary.

(i) *Comment:* Two comments were received with respect to § 1530.208(c) that the retention of records for five years imposes an excessive burden on licensees; a three-year record retention time frame was proposed. Two commentors objected to the requirement to make records available for copying, rather than simple inspection, as unjustified considering the confidentiality of such records.

*Response:* The experience of Operation Bittersweet, in which civil litigation is still ongoing nearly six years after the investigations ended and almost eight years after the alleged violations occurred, dictates document retention for a minimum of five years. With respect to the confidentiality of business records, privileged or confidential commercial or financial information or trade secrets obtained from any person are exempted from the public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552). FAS document security procedures are fully adequate to maintain business confidentiality of any documents obtained from licensees. FAS has determined that this change is not appropriate.

(j) *Comment:* One comment was received that the term "other

appropriate official of the Federal Government" in § 1530.208(d) is too broad and should be limited to authorized officials of the Licensing Authority.

*Response:* Other officials would include only those who have a direct interest in either program administration or the investigation of possible regulatory violations. FAS has determined that no change is necessary.

**Subpart C—Sugar for the Production of Polyhydric Alcohol**

(a) *Comment:* Two comments were received with respect to § 1530.307, which prohibits the replacement of sugars used in the production of polyhydric alcohol, that since refiners do not have the facilities to segregate sugars and sugar is completely fungible, this requirement is not practicable.

*Response:* FAS agrees with the reasoning provided by the commentors, and therefore will change the phrase "must be", in the first sentence of § 1530.307, to "need not be" and change the phrase "shall not", in the second sentence, to "may".

**List of Subjects in 7 CFR Part 1530**

Imports, Sugar, International trade, Sugar containing products, Polyhydric alcohol, Re-export programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1530 is amended as set forth below.

**PART 1530—[AMENDED]**

1. Section 1530.102 is amended by revising paragraphs (b) and (f) to read as follows:

**§ 1530.102 Issuance of a license.**

* * * * *

(b) A quantity of refined sugar equivalent to the quantity of sugar, raw value, imported under a license, adjusted in accordance with § 1530.107 of this subpart, must be exported within 90 days of the date of entry of such sugar or must be transferred to a manufacturer within 90 days of the date of entry of such sugar.

* * * * *

(f) The licensee may utilize an agent to import, export or make transfers of sugar. The licensee must provide to the Licensing Authority a written authorization designating such person to act as an agent for the purpose of importing, exporting or transferring sugar. If the licensee uses an agent to export the refined sugar, the licensee shall notify the Licensing Authority in writing of the agent's identity, and the agent shall certify to the Licensing Authority in writing that the refined sugar has been exported from the customs territory of the United States.

* * * * *

2. Section 1530.103 is amended by revising paragraph (g) to read as follows:

**§ 1530.103 Bond requirements.**

* * * * *

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of export of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

3. Section 1530.105 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1530.105 Proof of export and notice of drawback claims.**

(a) The licensee shall provide a written certification that he or she has exported a specified quantity of refined sugar. The certification shall include:

(1) The licensee's name, address, and license number;

(2) A description of the refined sugar exported, the polarity of such sugar, and its weight;

(3) An identification of the imported sugar to which the exported sugar corresponds, including the quantity and polarization of the imported sugar;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the refined sugar and the amount of such refund; and

(7) A statement that the sugar has been exported from the customs territory of the United States, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar.

(b) The certification must be submitted to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported unless satisfactory and timely certification is received.

* * * * *

4. Section 1530.106 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 1530.106 Transfer of sugar.**

* * * * *

(b) Refined sugar transferred under a license must be shipped by the licensee to the manufacturer within 90 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

* * * * *

(d) The licensee may make transfers of refined sugar to more than one manufacturer; however, the combined total of such transfers may not exceed the maximum license amount.

* * * * *

5. Section 1530.107 is amended by revising paragraph (b) to read as follows:

**§ 1530.107 Charges and credits to licenses.**

* * * * *

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for:

(1) Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which proof of export has been submitted in accordance with the provisions of § 1530.105 of this subpart, but such credit, if granted

conditionally, will become final only when the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar;

(2) Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which a Notice of Transfer has been submitted to the Licensing Authority in accordance with § 1530.106 of this subpart; and

(3) Quantities of sugar charged to the license which the Licensing Authority determines have been destroyed, lost in processing the sugar, or otherwise disposed of so as to render the exportation or transfer of a corresponding quantity of sugar impossible or unnecessary.

* * * * *

6. Section 1530.109 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 1530.109 Records.**

(a) Each licensee requesting credit in accordance with § 1530.107(b) shall keep records to establish for all refined sugar exported under the provisions of this program:

(1) The quantity and identity of the sugar, raw value, entered under subheading 1701.11.02 of the HTS;

(2) The date or inclusive dates of processing (refining);

(3) The quantity and description of the articles produced, and their polarities;

(4) The quantity of sugar, refined basis, exported under the provisions of this subpart;

(5) The quantity of sugar, refined basis, transferred to a manufacturer under the provisions of this subpart, and the identity of such manufacturer;

(6) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to an original, certified U.S. Customs Service Form 7512, an original bill of lading or copy of a U.S. Customs Service Form 7511, and any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and

(7) Any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the refined sugar and the amount of any such refund paid.

* * * * *

(d) If, after inspection of the records, the Licensing Authority determines that such records are inadequate to establish that the imported sugar was refined by the licensee, sugar was lost or destroyed or otherwise disposed of to render exportation or transfer impossible or unnecessary, refined sugar was exported, drawback of duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the refined sugar, or any other requirement of this program was complied with, the Licensing Authority may revoke credits granted for the appropriate quantity of sugar.

7. Section 1530.110 is revised to read as follows:

**§ 1530.110 Enforcement.**

(a) If at any time after receiving the proof of export described in § 1530.105 of this subpart, the Licensing Authority determines that the export of a quantity of refined sugar corresponding to the quantity of sugar entered under the license did not occur, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of any refined sugar, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirements of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that refiner. The Licensing Authority may suspend or revoke a license if claims are filed under 19 CFR part 191 for the refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or if any claim under 19 CFR part 191 is denied on the basis that such refined sugar was not exported.

8. Section 1530.202 is amended by revising paragraph (b) to read as follows:

**§ 1530.202 Issuance of a license.**

* * * * *

(b) A quantity of sugar equivalent to the quantity of sugar transferred under a license must be exported in a sugar containing product within 18 months of the date of transfer from the refiner. However, the Licensing Authority may credit a license for valueless sugar lost in normal product manufacture.

* * * * *

9. Section 1530.203 is amended by revising paragraph (g) to read as follows:

**§ 1530.203 Bond requirements.**

* * * * *

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of export of sugar containing products or the last date on which such products should have been exported, whichever occurs first, in an amount sufficient to offset the charge to the license for corresponding sugar, or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported in the form of sugar containing products in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

10. Section 1530.204 is amended by revising paragraph (b) to read as follows:

**§ 1530.204 Transfer of sugar.**

* * * * *

(b) Refined sugar transferred under a license must be shipped by the refiner to the licensee within 90 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

* * * * *

11. Section 1530.205 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1530.205 Proof of export.**

(a) The licensee shall provide a written certification that he or she has exported a specified quantity of sugar in sugar containing products. The certification shall include:

(1) The licensee's name, address, and license number;

(2) The product description, the percentage of sugar in such product, and the total weight of sugar contained in the sugar containing product exported;

(3) The percentage of valueless sugar lost in normal product manufacture and the quantity of valueless sugar actually lost in the manufacture of the product exported;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) An identification of the transferred sugar which corresponds to the sugar exported in the sugar containing product, including the quantity of the transferred sugar;

(7) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the sugar containing product and the amount of such refund;

(8) A statement that the sugar containing products have been exported, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the sugar containing product.

(b) The certification must be submitted to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported in sugar containing products unless satisfactory and timely certification is received.

* * * * *

12. Section 1530.206 is amended by revising paragraph (a) to read as follows:

**§ 1530.206 Charges and credits to licenses.**

* * * * *

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for:

(1) Quantities of sugar in the sugar containing products for which proof of export has been submitted in accordance with the provisions of § 1530.205 of this subpart, but such credit, if granted conditionally, will become final only when the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the sugar containing product; and

(2) Quantities of sugar charged to the license which the Licensing Authority determines have been destroyed, lost in the production process, or otherwise disposed of so as to render the use or exportation of a corresponding quantity of sugar in sugar containing products impossible or unnecessary.

* * * * *

13. Section 1530.208 is amended by revising paragraph (a) to read as follows:

**§ 1530.208 Records.**

(a) Each licensee requesting credit in accordance with § 1530.206(b) shall keep records to establish for all sugar containing products exported under the provisions of this program:

(1) The date or inclusive dates of manufacture;

(2) The quantity and identity of the sugar, refined basis, transferred to the licensee under the provisions of this subpart;

(3) The quantity and description of the articles manufactured;

(4) The quantity of sugar, refined basis, contained in the sugar containing products exported;

(5) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to an original, certified U.S. Customs Service Form 7512, an original bill of lading or copy of a U.S. Customs Service Form 7511, and any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and

(6) Any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the sugar containing product and the amount of any such refund paid.

* * * * *

14. Section 1530.209 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1530.209 Enforcement.**

(a) If at any time after receiving the proof of export described in § 1530.205 of this subpart, the Licensing Authority determines that the export of sugar in the form of sugar containing products corresponding to the quantity of sugar transferred under the license did not occur, and has not been otherwise disposed of or lost in the manufacturing process as valueless sugar, and if the bond has been released under § 1530.203, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported in sugar containing products. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of any sugar containing product, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.203, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported in sugar containing products. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

15. Section 1530.303 is amended by revising paragraph (g) to read as follows:

**§ 1530.303 Bond requirements.**

* * * * *

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of production of polyhydric alcohols in a quantity sufficient to offset the charge to the license for the imported sugar used for producing such polyhydric alcohols, or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which production of polyhydric alcohol was required, whichever difference is greater, times the quantity of raw sugar that should have been, but was not, used in the production of polyhydric alcohol in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

16. Section 1530.306 is amended by revising paragraph (b) to read as follows:

**§ 1530.306 Charges and credits to licenses.**

* * * * *

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for quantities of sugar for which a Certificate of Use has been submitted in accordance with the provisions of § 1530.305 of this subpart, but such credit, if granted conditionally, will become final only when the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the polyhydric alcohol.

* * * * *

17. Section 1530.307 is revised to read as follows:

**§ 1530.307 Replacement of sugars; substitution of sugars.**

The sugar used in the production of polyhydric alcohols under this program need not be the identical sugar imported under the license. The licensee may substitute other sugar for sugar imported under the license or replace such imported sugar with other sugar.

18. Section 1530.309 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1530.309 Enforcement.**

(a) If at any time after receiving the proof of production of polyhydric alcohol described in § 1530.305 of this subpart, the Licensing Authority determines that the sugar entered under the license was not used for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, and if the bond has been released under § 1530.303, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which production of polyhydric alcohol was required, whichever difference is greater, times the quantity of sugar that should have been, but was not, used in such production of such polyhydric alcohol. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of any polyhydric alcohol, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.303, the Licensing

Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar used in the production of such polyhydric alcohol. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

Signed at Washington, DC on May 29, 1991.

**Duane Acker,**

*Administrator.*

[FR Doc. 91-16133 Filed 7-5-91; 8:45 am]

BILLING CODE 3410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 158

**[Docket No. 26385; Part 158(New)]**

**RIN 2120-AD87**

### Passenger Facility Charges

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

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

**SUMMARY:** This action corrects errors which appeared in a final rule, published on May 29, 1991 (56 FR 24254) which adopted new regulations to establish a passenger facility charge program. This amendment corrects language in § 158.27 which inadvertently referenced a nonexisting paragraph. It also corrects the legal citation of the National Environmental Policy Act of 1969.

**EFFECTIVE DATE:** June 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3831.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 29, 1991, the FAA published new regulations to establish a passenger facility charge program (56 FR 24254). The language in § 158.27(c)(4) contained a reference to paragraph (g) of this section. However, there is no paragraph (g) in that section. Earlier drafts of the rule included a paragraph (g) allowing the Administrator to request additional information if it were needed to evaluate an application. Since the Administrator has that authority without the provision, the paragraph was removed from the final rule. The reference remained inadvertently.

Section 158.29(b)(iv) contained a reference to the National Environmental Policy Act of 1969 (NEPA), 40 U.S.C. The U.S. Code cite used in that reference was in error. The cite should have been 42 U.S.C. 4321.

#### Need for Immediate Adoption

This amendment corrects errors and restores an agency regulation to its intended version. Because this action is a technical amendment, I find that good cause exists for making the amendment effective in less than 30 days to eliminate the possibility of misinterpretation of the intent of published agency regulations.

#### List of Subjects in 14 CFR Part 158

Air carriers, Airport, Air transportation, Passenger facility charge.

#### The Amendments

For the reasons set forth above, part 158 of the Federal Aviation Regulations (14 CFR part 158) is amended as follows:

### PART 158—PASSENGER FACILITY CHARGES (PFC's)

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101-508, title II, subtitle B, November 5, 1990); 49 U.S.C. App. 2206 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; sections 9304(e) and 9307 of the Airport Noise and Capacity Act of 1990, Pub. L. 101-508, title IX, subtitle D.

2. Section 158.27(c)(4) is revised to read as follows:

**§ 158.27 Review of applications.**

* * * * *

(c) * * *

(4) Following review of the application and public comments, the Administrator issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

* * * * *

3. Section 158.29(b)(1)(iv) is revised to read as follows:

**§ 158.29 The Administrator's decision.**

* * * * *

(b) * * *

(1) * * *

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 have been satisfied.

* * * * *

Issued in Washington, DC on June 28, 1991.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations and Enforcement, Office of the Chief Counsel.*

[FR Doc. 91-15957 Filed 7-5-91; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF JUSTICE

### Parole Commission

### 28 CFR Part 2

### Paroling, Recommitting and Supervising Federal Prisoners; Effect of Acquittals on Admissibility of Evidence in Parole Hearings

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Commission is removing a provision in its regulations that prohibited (with certain exceptions) consideration of charges upon which a prisoner was found not guilty after trial. The revised regulation substitutes a statement of general policy with respect to the use of such charges. The change reflects recent federal court decisions concerning the authority of a sentencing judge to consider the same type of evidence. The rule is intended to prevent certain situations in which the application of the prohibition has produced parole results inconsistent with the statutory criteria for parole at 18 U.S.C. 4206.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Preston, Attorney, Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** At 44 FR 26548 (May 4, 1979), the Commission added to 28 CFR 2.19(c) a provision that prohibited it from considering, in any determination, charges upon which a prisoner was found not guilty after trial, unless reliable information was presented that was not introduced into evidence at that trial. In the years following the adoption of this regulation, the Commission found it necessary to add to two more exceptions, covering the situations in which the not guilty verdict was by reason of the prisoner's

mental condition, or was inconsistent with another jury verdict.

Notwithstanding these exceptions, the application of this provision has continued to result in situations in which the Commission is required grant a parole in the face of strong doubts as to whether parole fully meets the criteria at 18 U.S.C. 4206(a) (1976). In the meantime, following the implementation of the sentencing guideline system that took effect on November 1, 1987, several federal appellate courts have issued decisions upholding the authority of sentencing judges to consider charges that have resulted in not guilty verdicts. Although these decisions concern the application of the sentencing guidelines, they have obvious relevance to the parole guidelines. At present, nine federal circuits hold that a sentencing judge may consider a defendant's conduct despite an acquittal.

In consequence, the Commission decided that it could no longer justify granting paroles in adherence to a regulation or policy that requires it to ignore relevant evidence, on the ground that the same evidence failed to persuade a jury in a criminal trial to enter a verdict of guilty. The Commission published, at 56 FR 16269 (April 22, 1991), an interim rule permitting the use of charges that have resulted in an acquittal, provided certain standards are met. The public was invited to comment.

Under the standards set forth in the interim rule, the Commission would not override an acquittal unless it found that it could not adequately determine the prisoner's suitability for release on parole, or to remain on parole, without taking the evidence into account. The Commission would also have to be satisfied that it had an adequate quantity of evidence (*i.e.*, sufficient details, corroboration, etc.), that the prisoner had been given the opportunity to respond, and that the evidence met the preponderance standard. Accordingly, the new regulation requires the Commission to disregard evidence that has resulted in an acquittal only if other available evidence is deemed adequate to formulate a reliable and realistic assessment of the seriousness of the case and the probable risk that release would pose to the public welfare. The Commission must make the preliminary finding that it cannot perform its duty under the statute, 18 U.S.C. 4206(a), without consideration of the evidence in question, in order to look behind an acquittal.

**Public Comment**

The Commission received public comment from a prisoner who complained that the Commission's interim regulation erodes the finality of a court judgment, and that a "not guilty" verdict should mean not guilty by any standard, regardless of whether the standard to be applied is the "beyond a reasonable doubt" test or the "preponderance" test. Although the Commission understands a defendant's perspective that a verdict of acquittal ought to certify his innocence and put the charge forever behind him, the Commission must also point out that this is not a legally correct view. An acquittal only reflects the prosecution's failure to prove guilt "beyond a reasonable doubt," and leaves open the possibility that there is enough evidence, for a jury in a civil trial or a fact-finder in an administrative proceeding, to find that charge proved by a "preponderance of the evidence." *Standlee* v. *Rhay*, 557 F.2d 1303 (9th Cir. 1977). Thus, the public comment received by the Commission is not seen as propounding a sufficient objection to making the interim rule a final rule.

**Implementation**

The final regulation will govern the conduct of hearings conducted by the U.S. Parole Commission from its effective date forward. Any pending case not already decided under the interim rule that went into effect on April 22, 1991, may be remanded for a new hearing to consider any evidence made admissible by the revised regulation. However, a final decision may be reopened under 28 CFR 2.28(f) only if: (1) The subject of that determination has not been released on parole; and (2) a reopening is deemed necessary to prevent a clear miscarriage of justice.

**Regulatory Flexibility Statement**

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR part 2 is amended is follows:

**PART 2—[AMENDED]**

1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. In § 2.19 the last sentence of the introductory text of paragraph (c) and paragraphs (c) (1), (2), and (3), are revised, and paragraph (c)(4) and concluding text to paragraph (c) are added to read as follows:

**§ 2.19 Information considered.**

* * * * *

(c) * * * If the Commission is given evidence of criminal behavior that has been the subject of an acquittal in a federal, state, or local court, the Commission may consider that evidence if:

(1) The Commission finds that it cannot adequately determine the prisoner's suitability for release on parole, or to remain on parole, unless the evidence is taken into account;

(2) The Commission is satisfied that the record before it is adequate notwithstanding the acquittal;

(3) The prisoner has been given the opportunity to respond to the evidence before the Commission; and

(4) The evidence before the Commission meets the preponderance standard.

In any other case, the Commission shall defer to the trial jury. Offense behavior in Category 5 or above shall presumptively support a finding under paragraph (c)(1) of this section.

* * * * *

Dated: June 11, 1991.

**Carol Pavilack Getty,**

*Chairman, Parole Commission.*

[FR Doc. 91-16116 Filed 7-5-91; 8:45 am]

BILLING CODE 4410-01-M

---

**28 CFR Part 2**

## Paroling, Recommitting and Supervising Federal Prisoners: Distinguishing Between "Simple Couriers" and "Transporters" in Illegal Drug Cases

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission amends its guidelines at 28 CFR 2.20 in order to make a distinction, in its definition of a "peripheral role" in drug offenses, between simple couriers of drugs hired on an *ad hoc* basis, and professional "transporters" hired on a regular basis to carry large shipments of heroin, cocaine, marijuana, and other illicit drugs. The rule prevents professional transporters of illicit drugs from receiving the guideline reduction which the Commission intended to apply to individuals who are more aptly described as simple couriers. Professional transporters of large

amounts are rated as principals in the drug distribution or importation organization.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** In the U.S. Parole Commission's paroling policy guidelines, at 28 CFR 2.20, the Commission describes various offense severity ratings for offenses involving illegal drugs. These offense severity categories are predicated upon the amount, or the amount and purity, of the drugs involved. Each participant in a drug importation or distribution organization is rated according to the entire amount of illegal drugs involved in the conspiracy. This policy reflects the legal liability of conspirators for the actions of their confederates, and ensures that the guidelines are applied consistently to all members of the conspiracy.

The guidelines contain an exception, however, for offenders who can show that they played a "peripheral role" in the offense. The term "peripheral role" refers to conduct such as that of a deckhand on a marijuana boat, an offloader of marijuana, a person with no special skills hired as a courier of drugs on a commercial airline flight, etc. The term does not include persons with special skills, or persons who finance drug importation or distribution ventures. See 28 CFR 2.20, chapter 13, subchapter B, definition No. 14. Procedurally, the burden is on the prisoner to persuade the Commission that his or her possession of the amount of drugs in question was merely as a "peripheral" offender, as defined in the rule.

If the Commission is persuaded that the prisoner played a peripheral role, the guidelines prescribe a reduction in the offense severity category that is arrived at by reference to the amount, or amount and purity, of the total illegal drugs involved in the offense. For example, a Category Eight or Category Seven heroin or cocaine offense will be reduced to Category Six if the Commission finds that the offender had only a peripheral role. A Category Six rating will likewise be reduced to a Category Five rating, if such a finding is made. In marijuana and hashish offenses, and offenses involving other illicit drugs, a Category Six rating will be reduced to Category Five if the Commission finds that the offender had only a peripheral role.

As the example in definition No. 14 in chapter 13, subchapter B suggests, the type of "courier" the Commission had in mind is a casual hire to import narcotics on a commercial airline flight. Such couriers may also be recruited to carry illegal drugs in private vehicles, and on trains or buses. They are generally not individuals who are regularly engaged in this occupation, and they are usually given the minimum information necessary to identify the individual to whom the delivery is to be made. Such couriers have no more than temporary control over the drugs, no permanent role in the importation or distribution organization, and no discretion to exercise. They have little information about the organization, other than to tell how they were recruited and what instructions they were given.

The Commission has, however, recently seen individuals who claim the benefit of a peripheral role reduction when unusually large amounts of drugs are involved. These turn out to be individuals known to the Drug Enforcement Administration as "transporters". Such individuals work for highly organized "transportation groups", whose members regularly transport shipments of hundreds of kilos of heroin or cocaine into the United States for fees ranging from $1500 to $2500 per kilo. Although these individuals are entrusted with control of a significant shipment, they are not owners, nor do they play a managerial role in the organization for which the drugs are being carried.

In such cases, the Commission has exercised discretion to decline to make a peripheral role finding. Such individuals play a much more important role in the drug trade than simple couriers do, given the sheer size of the shipments they are able to move. In order to make this policy clear, the Commission considers is appropriate to change the definition of "peripheral role" in chapter 13, subchapter B. In recognition of the fact that even a simple courier can be entrusted with a large enough shipment of heroin or cocaine to warrant a Category Eight offense severity rating (15 kilos is the threshold for cocaine offenses rated in Category Eight), the Commission has set 50 kilos of cocaine as an example of an individual who carries such a unusually large amount of drugs as to warrant classification as a "transporter". However, the totality of circumstances will be considered by the Commission, and the amount of illegal drugs involved will not be the sole determinant. The degree of trust, professionalism, or control that may be inferred from the circumstances is critical. The effect of such an unusually large amount of drugs will be to place a special burden on the prisoner who claims the benefit of a "peripheral role" reduction to persuade the Commission that he was, contrary to appearances, only hired as a simple courier.

**Public Comment**

The Commission published a proposed rule for public comment on April 22, 1991 (56 FR 16285). One letter was received from a member of the public, in support of the Commission's proposed rule. She commented that she believed her husband had received an unduly harsh decision from the Commission in comparison with his codefendant, who would be considered a "transporter" under the rule. Both her husband and the codefendant received a "peripheral role" reduction in their offense severity category, and the codefendant received an additional reduction for cooperation with the authorities, cooperation which her husband as a simple courier could not have provided because he lacked detailed information about the conspiracy. The result was that the codefendant was required to serve less time than her husband. The commenter supported the proposed rule because it would preclude such a result.

**Regulatory Flexibility Statement**

This rule will not have a significant economic impact upon a substantial number of (lawful) small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Probation and parole, Prisoners.

## PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The U.S. Parole Commission amends the definition of "peripheral rule" at 28 CFR part 2.20, chapter 13, subchapter B, definition No. 14, to substitute the words "simple courier of drugs" for the words "courier of drugs" in the first sentence and to add the following sentence at the end of the definition to read as follows:

**§ 2.20 Paroling policy guidelines: Statement of general policy.**

* * * * *

**Chapter Thirteen General Notes and Definitions**

* * * * *

Subchapter B—Definitions

* * * * *

14. * * * Individuals who transport unusually large amounts of drugs (e.g., 50 kilos of cocaine or more) or who otherwise appear to have a high degree of trust, professionalism, or control will be considered to be "transporters" and not "simple couriers."

* * * * *

Dated: June 11, 1991.

**Carol Pavilack Getty,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 91-16114 Filed 7-5-91; 8:45 am]

BILLING CODE 4410-01-M

---

## 28 CFR Part 2

## Paroling, Recommitting and Supervising Federal Prisoners: Rating Solicitation Offenses on the Paroling Policy Guidelines

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission amends its guidelines at 28 CFR 2.20 to provide instructions for the rating of the crime "solicitation to commit a crime of violence," as described in 18 U.S.C. 373. Solicitation to commit a crime of violence is an offense that was added to federal law in 1984, and the Commission has found that the current guidelines do not provide adequate guidance for rating offense behaviors that fall within the scope of 18 U.S.C. 373.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** At 56 FR 16288 (April 22, 1991), the U.S. Parole Commission published a proposed rule to amend its guidelines at 28 CFR 2.20 to add the offense of "solicitation to commit a crime of violence." This offense was included in federal law at 18 U.S.C 373, as part of the Comprehensive Crime Control and Reform Act, Public Law 98-473 (October 12, 1984). In the Commission's experience, solicitation to commit a crime of violence typically occurs when a defendant in a criminal trial solicits another person to injure or murder a witness, but the person who is solicited to commit this crime reports the solicitation to law enforcement authorities. The behavior only becomes an attempt if the defendant does more, *e.g.*, provides money, a weapon, or a map of the intended victim's residence. If two or more persons are acting in concert to bring about the crime, the behavior is a conspiracy. See *U.S.* v. *Gabriel*, 810 F.2d 627 (7th Cir. 1987).

The Commission did not receive any public comment concerning this proposal. After due consideration, the Commission has decided to adopt the proposal as a final rule, without change.

### Regulatory Flexibility Statement

This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

### PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The U.S. Parole Commission amends the paroling policy guidelines in § 2.20, chapter One (Offenses of General Applicability), to add in numerical order the following paragraph 105:

**§ 2.20 Paroling policy guidelines: Statement of general policy.**

* * * * *

**Chapter One Offenses of General Applicability**

* * * * *

*105 Solicitation to Commit a Crime of Violence*

Grade solicitation to commit a crime of violence in the same category as the underlying offense if the crime solicited would be graded as Category Eight. In all other cases grade solicitation to commit a crime of violence one category below the underlying offense, but not less than Category One.

* * * * *

Dated: June 11, 1991.

**Carol Pavilack Getty,**

*Chairman, Parole Commission.*

[FR Doc. 91-16115 Filed 7-5-91; 8:45 am]

BILLING CODE 4410-01-M

---

## 28 CFR Part 2

## Paroling, Recommitting and Supervising Federal Prisoners: Searches of Federal Parolees by U.S. Probation Officers

**AGENCY:** Parole Commission, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission amends its regulations at 28 CFR 2.40 to authorize a special condition of parole requiring the parolee to permit his or her U.S. Probation Officer to conduct searches and seizures for concealed contraband. This special condition, which is to be added as a condition of parole only when demonstrably necessary to protect the public welfare, is in response to the concerns of U.S. Probation Officers that their supervision of certain parolees cannot be effective without more expanded search and seizure authority than the Commission has traditionally permitted.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** The U.S. Parole Commission has published, at 28 CFR part 2.40, the standard conditions of parole supervision which appear on the certificate that is provided to every parolee. The Commission has broad authority "* * * to provide for such supervision and other limitations as are reasonable to protect the public welfare." 18 U.S.C. 4209(a). The Commission also has authority to modify the standard conditions of parole, and to add special conditions of parole, in order to respond to special problems encountered by the U.S. Probation Officer. 18 U.S.C. 4209(d). For example, the Commission may place a parolee in a half-way house, under special drug aftercare treatment, or under a special condition providing for detailed financial reporting, restrictions upon the type of employment the parolee may accept, or any other condition designed to deter, prevent, or control a particular behavioral problem that might otherwise result in eventual revocation and return to prison.

U.S. Probation Officers have not, traditionally, been granted intrusive search and seizure authority over federal parolees. The Commission has been reluctant to authorize such a role for U.S. Probation Officers, primarily because of safety concerns, and the fact that many U.S. Probation Officers have neither the training nor the equipment for what is "* * * apt to be a hazardous duty." *United States* v. *Cardona*, 903 F.2d 60, 68 (1st Cir. 1990).

However, for some years, the Commission has made it a standard condition of every parole that the parolee shall permit confiscation of any materials which the probation officer believes may constitute contraband, and which he observes in plain view. 28 CFR 2.40(a)(12). This condition was intended to avoid tying the probation officer's hands when, during a home visit for example, illicit drugs, a firearm, etc., are

out in the open. This condition authorizes the seizure of such contraband, and prevents the destruction of evidence before the officer can report the incident to law enforcement authorities.

It has been pointed out to the Commission by certain U.S. Probation Offices that "plain view" search and seizure authority can, in some instances, create a more dangerous situation than a planned, controlled search at the probation officer's discretion. Moreover, it appears that, in some districts, U.S. Probation Officers will have the training and back-up to perform a search of the parolee's residence, place of business, vehicle, or person in a reasonably safe responsible manner.

It must be emphasized that this special condition would be imposed pursuant to the provisions of 18 U.S.C. 4209(d), only when there is a reasonable basis for doing so, in the specific circumstances of the case. The condition must be demonstrably necessary to protect the public welfare in relation to the history and characteristics of the parolee involved.

**Public Comment**

Moreover, the Commission must be assured that the Chief U.S. Probation Officer in the district of supervision has in place sufficient training and back-up so that any search and seizure involving a potentially dangerous parolee will be safely carried out. The special condition is intended to address a particular problem such as suspected trafficking in illicit narcotics, contraband, firearms, stolen property, and the like.

The Commission published a proposed rule regarding a special condition of parole on April 22, 1991, at 56 FR 16286. The Commission received a substantial amount of comment from probation officers and federal public defenders across the nation. Much of the comment received from the probation officers relates to the probation officer's concern for safety during the condition of searches.

Generally, the comment received from the probation officers was favorable with the exception of two districts. The United States Probation Office for the District of Columbia opposed the proposed rule change believing that such a policy "will jeopardize the officer's safety and present many more problems than it is intended to remedy." The Chief Probation Officer asked rhetorically "is the probation system prepared to take on such an ominous responsibility, especially in view of the sophisticated weapons that are in our community?" The United States Probation Officer for the District of Kansas also opposed the proposed rule, commenting that a function of executing a search is more closely related to the role of a law enforcement officer rather than that of a probation officer.

The remaining comments received by probation officers (there were 15 in all) strongly supported the proposed change with the U.S. Probation Office for the Eastern District of California believing that the rule would enhance probation officer security (*i.e.*, by comparison with the "plain view" seizures) if conducted under controlled conditions. Comment received from the U.S. Probation Office for the District of Arizona related that this additional responsibility reflected the "coming of age" of the U.S. Probation Officer's parole supervision process believing it was a necessary supervision tool. Chief U.S. Probation Officer for the Southern District of California believes that it should be a standard condition of parole imposed upon all parolees rather than the limited special condition as suggested by the Commission. Other probation officers noted that most state and county probation parole agencies already have search and seizure authority and that with proper training the U.S. Probation Officers could use this tool to make parole supervision more meaningful. Similarly, it was noted that many probation officers already conduct searches as a result of their duties as probation officers supervising probationers and supervised releasees. A U.S. Probation Officer from the Northern District of Georgia stated that they have 14 officers who have received specialized training and have the ability to conduct their own searches under their own guidelines.

The Commission received comment from four Federal Public Defenders' offices, all of which expressed concern over the expansion of the role of a federal probation officer. The Federal Public Defender from the Eastern District of Missouri and Southern and Central Districts of Illinois believes that the proposed rule "significantly broadens the traditional role of the probation officers" and asserts that there needs to be a standard to determine what a "reasonable basis" is. The Commission generally concurred that an elaboration of what constitutes a "reasonable basis" should be placed in the procedures manual along with other standards regarding safety and training. One federal public defender's comment that "a parole search should never be used as a substitute for normal criminal investigation." Finally, another federal public defender commented that the proposed condition authorizing searches might result in abuse from a probation officer. The Commission discussed these issues and concluded that it would not modify the proposed rule at this time and decided to form a committee to study what type of general policy guidelines should be adopted regarding the searches. Additionally, the Commission declined to adopt a motion to make it a standard condition of parole applicable to all parolees at this time, so that the Commission could monitor the requests for the imposition of the special condition and monitor for signs of possible abuse.

**Regulatory Flexibility Statement**

This rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Probation and parole, Prisoners.

28 CFR part 2 is amended as follows:

## PART 2—[AMENDED]

1. The authority citation of 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The U.S. Parole Commission amends its regulations at 28 CFR 2.40 to add the following new last sentence to paragraph (a)(12):

**§ 2.40 Conditions of release.**

(a) * * *

(12) * * * The Commission may also when a reasonable basis for doing is presented, modify the conditions of parole to require the parolee to permit the U.S. Probation Officer to conduct searches and seizures of concealed contraband on the parolee's person, and in any building, vehicle, or other area under the parolee's control, at such times as the U.S. Probation Officer shall decide.

* * * * *

Dated: June 11, 1991.

**Carol Pavilack Getty,**

*Chairman, Parole Commission.*

[FR Doc. 91-16117 Filed 7-5-91; 8:45 am]

BILLING CODE 4410-01-M

**28 CFR Part 2**

## Paroling, Recommitting and Supervising Federal Prisoners: Total Abstinence Requirement for Parolees in Special Drug and Alcohol Treatment Programs

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission amends its regulation at 28 CFR part 2.40 to add standard special alcohol and drug aftercare treatment conditions, both of which will include a provision requiring total abstinence from alcohol and/or other intoxicants during and after completion of the program. These are modifications of two commonly used special conditions which the Commission has customarily imposed on parolees under its statutory authority at 18 U.S.C. 4209(a), where there is evidence of prior or current drug or alcohol abuse. The effect of the modification is to require, where these treatment program conditions are imposed, that the parolee totally abstain from alcohol and/or other intoxicants during and after completion of the program. The purpose to be accomplished is to prevent relapse, which even moderate alcohol use can promote in a case of past drug or alcohol addiction.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** P. Dawn Sikkema, Attorney, Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** A proposed rule, identical to the final rule adopted by the Commission except for a minor amendment discussed below, was published at 52 FR 16287 (April 22, 1991). (The comment date for the proposed rule was corrected in 56 FR 21458, May 9, 1991.)

The standardization of the special drug aftercare treatment condition and the special alcohol aftercare treatment condition, both with an additional total abstinence requirement, was adopted by the Parole Commission after concerns were raised by U.S. Probation Officers that the drinking of alcohol by a parolee while in either program undercuts effective participation in such a program, and may cause the parolee to relapse if it is continued after the program is concluded. The standard condition of release in 28 CFR 2.40(a)(9), that a parolee "shall not drink alcoholic beverages to excess," has made it difficult for a probation officer to supervise a parolee with an alcohol or drug abuse problem, because the condition suggests that controlled drinking is possible.

At its quarterly meeting in February 1991, the Commission heard testimony from Dr. Mary Ann Barr, President of the Sausalito Professional Clinic (an outpatient chemical dependence treatment program), regarding the results of scientific research. Dr. Barr stated, with regard to alcohol dependent individuals, that: (1) Alcohol use has repeatedly been shown to be linked to aggression facilitation and criminal behavior; (2) alcohol use is highly correlated to all forms of family violence; and (3) abstinence from alcohol is widely recognized in the private sector as the only realistic approach to alcohol dependence treatment. With regard to drug dependent individuals, Dr. Barr stated that the research shows that: (1) A significant proportion of drug addicted persons (*e.g.*, opiate addicts and cocaine addicts) also have undiagnosed alcohol dependence; (2) alcohol use has repeatedly been shown to be a major contributor to relapse into the addicts drug of choice; (3) alcohol use during or after drug treatment is related to poor treatment outcomes; (4) commitment to absolute abstinence decreases the risk of a "first slip"; and (5) abstinence from alcohol is consistent with the current therapeutic practices of drug/alcohol treatment in the private sector. Following her testimony, Dr. Barr provided the Commission with comprehensive bibliographies of scientific research supporting her recommendation that the Commission require total abstinence from the use of alcohol by parolees who are given a special alcohol and/or drug aftercare treatment condition.

### Public Comment

After publication of the proposed rule, the Commission received substantial public comment. The public comment from U.S. Probation Officers was overwhelmingly in favor of the total abstinence requirement. One probation officer stated "the need to be completely substance abuse free is important in dealing with individuals who have addictive personalities." A Chief Probation Officer said "Research, the 12-Step Tradition, and our own experience confirm that drug users are at high risk for relapse if they continue to drink alcohol * * * We should expect clients to do more than abstain from illegal drugs."

The public comment opposed to the rule focused primarily on the fact that drinking alcohol is not illegal, and the difficulties of enforcement. The Commission recognizes that drinking alcohol is not unlawful in our society. It has therefore concluded that a warrant will not be issued the first time a parolee drinks alcohol. As was stated in the supplementary information attached to the proposed rule, the total abstinence requirement is primarily a rehabilitation mechanism. Its intention is to provide leverage for the U.S. Probation Officer to promote the rehabilitation of the parolee, and the Commission does not intend to issue warrants for a violation of the condition unless it is clear that the parolee's use of alcohol signals a pattern of willful defiance of parole supervision, and that the parolee's attitude is incompatible with the U.S. Probation Officer's efforts to promote the parolee's rehabilitation. Enforcement concerns are therefore not as critical as in the case of illegal drug use, since the behavior that will justify a warrant request is likely to be of a nature that will not escape the probation officer's notice. Thus, while the Commission acknowledges that the use of alcohol is not unlawful, the total abstinence requirement reflects the fact that, for certain parolees, use of alcohol is inconsistent with their rehabilitation.

### Changes From the Proposal

One probation officer commented that the proposed rule lacked a provision for testing to determine if a parolee is using alcohol. That comment was discussed at the Commission meeting, and the Commission modified the proposed rule in subsection (1)(2) by adding the phrase "(including alcohol)." The modified rule reads as follows: "The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which may include testing to determine whether the parolee has reverted to the use of drugs (including alcohol)." In addition, the Commission voted that the term "drug test" in § 2.40(a)(14) ("A parolee shall submit to a drug test whenever ordered by his Probation Officer") shall hereafter be interpreted to include "alcohol test." Therefore, a U.S. Probation Officer may order a parolee to submit to a breathalizer or other alcohol test pursuant to § 2.40(a)(14).

### Regulatory Flexibility Statement

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission amends 28 CFR part 2, as follows:

## PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.40 is amended by the addition of paragraph (l) following paragraph (k). New paragraph (l) provides as follows:

**§ 2.40 Conditions of release.**

* * * * *

(l)(1) The Commission may require a parolee, when there is evidence of prior or current alcohol dependence or abuse, to participate in an alcohol aftercare treatment program. In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

(2) The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which may include testing to determine whether the parolee has reverted to the use of drugs (including alcohol). In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

Dated: June 11, 1991.

**Carol Pavilack Getty,**

*Chairman, Parole Commission.*

[FR Doc. 91-16118 Filed 7-5-91; 8:45 am]

BILLING CODE 4410-01-M

---

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[FRL-3971-9]

### Protection of Stratospheric Ozone; Correction

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

**ACTION:** Temporary final rule; correction.

**SUMMARY:** EPA is correcting an error in the regulatory language of the temporary final rule which appeared in the Federal Register on March 6, 1991 (56 FR 9518).

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** David Lee, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M St. SW., Washington, DC 20460.

**ADDRESSES:** Information relevant to this notice is contained in Docket A-91-05 which may be viewed at the Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

**SUPPLEMENTARY INFORMATION:** EPA's March 6 temporary final rule contained an error in its revision of a previous regulation (53 FR 30566). This error is being corrected by today's notice.

Dated: July 1, 1991.

**Michael Shapiro,**

*Acting Assistant Administrator for Air and Radiation.*

## PART 82—[CORRECTED]

The following correction is made in FRL 3909-6, the temporary final rule on Protection of Stratospheric Ozone, which was published in the Federal Register on March 6, 1991 (56 FR 9518).

**§ 82.9 [Corrected]**

The first sentence of § 82.9 paragraph (d)(3) which reads "If the Administrator's designated representative determines that the request for production allowances does not satisfactorily meet the requirements stated in paragraph (d) of this section." is revised to read as follows:

"If the Administrator's designated representative determines that the request for production allowances does not satisfactorily meet the requirements stated in paragraph (d) of this section, the Administrator's designated representative will issue a note disallowing the request for additional production allowances."

[FR Doc. 91-16120 Filed 7-5-91; 8:45 am]

BILLING CODE 6560-50-M

---

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1051 and 1220

[Ex Parte No. MC-199]

### Petition for Declaratory Order—Yellow Freight System, Inc.—Retention of Documents

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** At 56 FR 7323, February 22, 1991, the Commission proposed to amend its recordkeeping and record retention rules at 49 CFR 1051.1 and 49 CFR 1220.3. In this proceeding, the Commission is adopting final amendments to those rules to ensure their continuing vitality in the face of changing technologies. The amended rules are set forth below.

**EFFECTIVE DATE:** August 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jane Udovic (202) 275-7885 or Richard B. Felder (202) 275-7691 [TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

### Energy and Environmental Considerations

Modifying the regulations governing recordkeeping and record retention will not significantly affect either the quality of the human environment or the conservation of energy resources.

### Regulatory Flexibility Analysis

We reaffirm our prior certification that adoption of the rule modifications will not have a significant economic impact on a substantial number of small entities. While it is possible that modification of the rules may benefit small carriers, we do not see any impact as significant.

### List of Subjects

*49 CFR Part 1051*

Buses, Freight, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 1220*

Freight forwarders, Maritime carriers, Motor carriers, Railroads, Reporting and recordkeeping requirements.

Decided: June 28, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, parts 1051 and 1220 of the Code of Federal Regulations are amended as follows:

## PART 1051—RECEIPTS AND BILLS

1. The authority citation for part 1051 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11144; 5 U.S.C. 553.

**§ 1051.1 [Amended]**

2. In § 1051.1, the concluding text is revised to read as follows: "The carrier shall keep a record of this information as prescribed in 49 CFR part 1220."

## PART 1220—PRESERVATION OF RECORDS

3. The authority citation for part 1220 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11145; 5 U.S.C. 553.

4. In § 1220.3, paragraphs (a) and (b) are revised; paragraphs (c), (d), and (e) are removed; paragraphs (f) and (g) are redesignated as paragraphs (c) and (d), respectively; newly designated paragraph (c) is revised; and, in newly designated paragraph (d), the word "film" is revised to read "medium".

**§ 1220.3 Preservation of records.**

(a) All records may be preserved by any technology that is immune to alteration, modification, or erasure of the underlying data and will enable production of an accurate and unaltered paper copy.

(b) Records not originally preserved on hard copy shall be accompanied by a statement executed by a person having personal knowledge of the facts indicating the type of data included within the records. One comprehensive statement may be executed in lieu of individual statements for multiple records if the type of data included in the multiple records is common to all such records. The records shall be indexed and retained in such a manner as will render them readily accessible. The company shall have facilities available to locate, identify and produce legible paper copies of the records.

(c) Any significant characteristic, feature or other attribute that a particular medium will not preserve shall be clearly indicated at the beginning of the applicable records as appropriate.

* * * * *

[FR Doc. 91-16075 Filed 7-3-91; 8:45 am]
BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 672 and 675

[Docket No. 910223-1133

### Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA announces approval of regulations to implement changes to the domestic fisheries Observer Plan for the groundfish fisheries in the Gulf of Alaska and in the Bering Sea/Aleutian Islands area. It is intended to further the goals and objectives contained in the fishery management plans that govern these fisheries.

**EFFECTIVE DATE:** July 2, 1991.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review (EA/RIR) and the Observer Plan may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska 99801.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Baglin (Fishery Management Biologist, NMFS), 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

### Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) areas are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (Gulf FMP) and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Bering FMP). These FMPs were prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations at 50 CFR 611.92 and 611.93 for the foreign fisheries and at 50 CFR parts 672 and 675 for the U.S. fisheries. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

The Secretary approved Amendments 13 and 18 under section 304(b) of the Magnuson Act on November 1, 1989. Those amendments include certain management measures that are listed in the final rule published on December 6, 1989 (54 FR 50386). One of the measures authorizes a comprehensive domestic fishery observer program. An Observer Plan to implement provisions of this program was prepared by the Secretary in consultation with the Council and implemented by NOAA, effective February 7, 1990 (55 FR 4839, February 12, 1990).

The Observer Plan imposes responsibilities on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS-certified contractors who provide observers to groundfish fishing vessels and shoreside processors. The Observer Plan also describes observer qualifications, standards of observer conduct, conflict of interest standards for observers and contractors, and reasons for revoking contractor or observer certification.

At its September 24-29, 1990, meeting, the Council received recommended changes to the Observer Plan from its Scientific and Statistical Committee, its Advisory Panel, and NMFS staff, and asked for public testimony on the recommendations. The Council reviewed the recommendations and public testimony and, at its December 3-7, 1990, meeting, recommended several changes to the Observer Plan. These changes and one additional change were presented in a proposed rule published on March 22, 1991 (56 FR 12148), and are published in this final rule.

A description of, the reasons for, the amendments are as follows:

### Criteria for Observer Coverage Requirements for Shoreside Processing Facilities

The Secretary is amending the observer requirements for shoreside processing facilities. This final rule requires shoreside processors to determine monthly, rather than yearly, their need for observer coverage. There are three monthly triggering criteria for observer coverage. These criteria for shoreside processors are based on the amount of groundfish in metric tons (mt) processed, calculated in round weight equivalents. The criteria are 1,000 mt or more of groundfish, 500 mt to 1,000 mt of groundfish, and less than 500 mt of groundfish per month for 100 percent, 30 percent, and 0 percent observer coverage unless required by the Regional Director, respectively. For example, if a processor will process 1,000 mt of groundfish or more during

the upcoming month, the processor is required to have an observer for each day the processor receives or processes groundfish during that month. If the processor will process 500 mt to 1,000 mt of groundfish during the upcoming month, the processor is required to have an observer for 30 percent of the days of that month during which the processor receives or processes groundfish. Finally, shoreside processing facilities that will process less than 500 mt of groundfish during the upcoming month do not have to have an observer unless required by the Regional Director. The changes to monthly forecasting rather than yearly forecasting recognize the impracticality of trying to predict an entire year in advance a processor's groundfish receipts and facilitates compliance.

**Criteria for Observer Coverage for Mothership Processor Vessels**

The Secretary is adopting in this final rule the same monthly triggering criteria for observer coverage requirements for mothership processor vessels as for shoreside processing facilities and is deleting the vessel length requirements for observer coverage for mothership processor vessels. The Secretary considered the level of required observer coverage based on length of the vessel to be unnecessarily high because mothership processor vessels are similar to shoreside processing facilities in that they often receive presorted catch from catcher vessels, some of which have observers on board. The vessel length requirement for observer coverage will continue to apply to catcher vessels and catcher/processor vessels.

**NMFS Release of Observer Estimated Bycatch Rates of Prohibited Species for Public Information**

Observer data are administratively confidential under the Gulf and Bering FMPs. Currently, observer data, on an individual vessel basis, may be released to the public only if the vessel owner/operator authorizes the release. Release of observer data on vessel bycatch rates could be an incentive for the operators of other vessels to fish with lower bycatch rates by avoiding areas containing large amounts of prohibited species. Therefore, the Secretary is amending the Observer Plan to allow NMFS to release to the public observer estimated bycatch rates of prohibited species by target fishery for individual vessels possessing a Federal groundfish permit. This also will allow NMFS to publish data throughout the fishing year, showing areas of high and low bycatch rates of prohibited species by groundfish target fishery, without regard to the number of vessels reporting from the area. Release of information on bycatch rates of prohibited species will not reveal information on amounts of individual vessel groundfish catch and, therefore, will not violate federal law concerning confidentiality of data.

*Extension of NMFS Certification of Observer Contractors*

The Observer Plan needed to be amended to extend the certification time period for observer contractors. Under the existing Observer Plan, NMFS certification expired at the end of 1990, although the certification was extended administratively for a 6-month period until June 30, 1991. Therefore, the Secretary is extending the certification period for observer contractors indefinitely, unless revoked by NMFS. In addition to the criteria specified in the Observer Plan for revoking NMFS certification of an observer contractor, another criterion is added which specifies that if changes are made to the Observer Plan that no longer require NMFS certified observer contractors, their certification may be revoked. Major changes to the Observer Plan are expected to take place by the beginning of 1992 to comply with recent amendments to the Magnuson Act (Pub. L. No. 101–627, 104 Stat. 4436 (1990)).

*Public Comments*

No comments were received during the comment period.

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

1. Definitions of catcher/processor and mothership processor are moved from the definition sections in §§ 672.2 and 675.2 in the proposed rule to §§ 672.27 and 675.25, respectively. This change clarifies that these definitions apply only in §§ 672.27(c)(1)(ii) (A) and (B) and 675.25(c)(1)(ii) (A) and (B).

2. Coverage requirement triggers for mothership processor vessels and for shorebased plants were published in the proposed rule as amounts of groundfish "received and retained." The final rule establishes triggering criteria based on amounts of groundfish "processed" because existing regulations under §§ 672.5 and 675.5 require processed amounts of groundfish to be recorded and reported to NMFS. No Federal regulations exist that require processors to report accurate amounts of groundfish "received and retained" that would meet the needs of NMFS enforcement in monitoring compliance with the Observer Plan.

3. Existing observer coverage requirements in the Observer Plan for vessels are codified under the final rule and published in the Federal Register for the public's information and convenience.

4. Definitions for catcher vessel and fishing trip have been added to the final rule in § 672.27(c)(ii) (C) and (D) and § 675.25(c)(ii) (C) and (D).

*Classification*

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska, responds to a need for immediate change to the Observer Plan, and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that it is contrary to the public interest to delay for 30 days the effective date of this rule under provisions of section 553(d) of the Administrative Procedure Act. This rule must be implemented as soon as possible to remedy deficiencies regarding the Observer Plan. Existing annual criteria for required levels of observer coverage at shoreside processing facilities are impractical and place shoreside plants at risk of violating the Observer Plan and to delay implementation of this rule is contrary to the public interest. The establishment of monthly criteria for setting required levels of observer coverage for mothership processor vessels will remove an unnecessary burden of excess observer coverage.

The Alaska Region, NMFS, prepared an EA/RIR for this rule and the Assistant Administrator concluded that no significant impact on the human environment will occur. A copy of the EA/RIR is available from the Regional Director at either of the aforementioned addresses.

The Assistant Administrator has determined that this rule is not a major rule requiring the preparation of a regulatory impact analysis under Executive Order 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

When this rule was proposed, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business

Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq*. This conclusion is based on the RIR and a summary of this conclusion is published at 56 FR 12148 (March 22, 1991). As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has 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 of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period; therefore, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

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

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

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

Dated: July 1, 1991.

**Michael F. Tillman,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

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

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

2. In § 672.27, paragraphs (c)(1) and (c)(2) are revised and new paragraph (f) is added, to read as follows:

**§ 672.27 Observers.**

* * * * *

(c) * * *

(1) *Compliance by operators of vessels*—(i) *Applicability*. An operator of a vessel subject to this part must carry a NMFS certified observer on board the vessel whenever fishing operations are conducted, if the operator is required to do so by the Regional Director.

(ii) *Definitions for purposes of this section*—(A) *Catcher/processor vessel* means a processor vessel that is used for, or equipped to be used for, catching fish.

(B) *Mothership processor vessel* means a processor vessel that is not used for, or equipped to be used for, catching fish.

(C) *Catcher vessel* means a vessel that is used for, or equipped to be used for, catching fish.

(D) *Fishing trip* is defined to start on the day when fishing gear is first deployed and end on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

(iii) *Coverage requirements*. Notwithstanding paragraph (c)(1)(i) of this section, observer coverage is required as follows:

(A) A mothership processor vessel of any length that processes 1,000 mt or more, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer on board the vessel each day it receives or processes groundfish during that month.

(B) A mothership processor vessel of any length that processes from 500 mt to 1,000 mt, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer on board the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(C) Catcher/processors or catcher vessels 125 feet length overall or longer must carry a NMFS certified observer at all times while fishing for groundfish.

(D) Catcher/processors or catcher vessels from 60 through 124 feet length overall must carry a NMFS certified observer during 30 percent of their days during fishing trips in each calendar quarter of the year in which they fish more than 10 days in the groundfish fishery.

(2) *Compliance by managers of shoreside processing facilities*. (i) A manager of a shoreside processing facility that processes groundfish received from vessels regulated under this part must have a NMFS certified observer present at the facility whenever groundfish is received or processed, if the manager is required to do so by the Regional Director.

(ii) Notwithstanding paragraph (c)(2)(i) of this section observer coverage is required as follows:

(A) A shoreside processing facility that processes 1,000 mt or more, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer present at the facility each day it receives or processes groundfish during that month.

(B) A shoreside processing facility that processes 500 mt to 1,000 mt, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

(f) *Observer contractor certification*. (1) NMFS certification of an observer contractor is valid indefinitely unless revoked by NMFS.

(2) NMFS certification of an observer contractor can be revoked if changes are made to the Observer Plan, which no longer require NMFS certified observer contractors.

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

3. The authority citation for 50 CFR part 675 continues to read as follows:

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

4. In § 675.25, paragraphs (c)(1) and (c)(2) are revised and new paragraph (f) is added, to read as follows:

**§ 675.25 Observers.**

(c) * * *

(1) *Compliance by operators of vessels*—(i) *Applicability*. An operator of a vessel subject to this part must carry a NMFS certified observer on board the vessel whenever fishing operations are conducted, if the operator is required to do so by the Regional Director.

(ii) *Definitions for purposes of this section*—(A) *Catcher/processor vessel* means a processor vessel that is used for, or equipped to be used for, catching fish.

(B) *Mothership processor vessel* means a processor vessel that is not used for, or equipped to be used for, catching fish.

(C) *Catcher vessel* means a vessel that is used for, or equipped to be used for, catching fish.

(D) *Fishing trip* is defined to start on the day when fishing gear is first deployed and end on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

(iii) *Coverage requirements*. Notwithstanding paragraph (c)(1)(i) of this section, observer coverage is required as follows:

(A) A mothership processor vessel of any length that processes 1,000 mt or more, calculated in round weight

equivalents, of groundfish during a calendar month is required to have a NMFS certified observer on board the vessel each day it receives or processes groundfish during that month.

(B) A mothership processor vessel of any length that processes 500 mt to 1,000 mt, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer on board the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(C) Catcher/processors or catcher vessels 125 feet length overall or longer must carry a NMFS certified observer at all times while fishing for groundfish.

(D) Catcher/processors or catcher vessels from 60 through 124 feet length overall must carry a NMFS certified observer during 30 percent of their days during fishing trips in each calendar quarter of the year in which they fish more than 10 days in the groundfish fishery.

(2) *Compliance by managers of shoreside processing facilities.* (i) A manager of a shoreside processing facility that processes groundfish received from vessels regulated under this part must have a NMFS certified observer present at the facility whenever groundfish is received or processed, if the manager is required to do so by the Regional Director.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, observer coverage is required as follows:

(A) A shoreside processing facility that processes 1,000 mt or more, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer present at the facility each day it receives or processes groundfish during that month.

(B) A shoreside processing facility that processes 500 mt to 1,000 mt, calculated in round weight equivalents, of groundfish during a calendar month is required to have a NMFS certified observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

(f) *Observer contractor certification.* (1) NMFS certification of an observer contractor is valid indefinitely unless revoked by NMFS.

(2) NMFS certification of an observer contractor can be revoked if changes are made to the Observer Plan, which no longer require NMFS certified observer contractors.

[FR Doc. 91-16073 Filed 7-2-91; 3:08 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

[FV-91-298PR]

### Expenses and Assessment Rate for Lemons Grown in California and Arizona

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate for the 1991–92 fiscal year under Marketing Order No. 910 for lemons produced in California and Arizona. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Lemon Administrative Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

**DATES:** Comments must be received by July 18, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 70 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 4, 1991, and unanimously recommended 1991–92 marketing order expenditures of $825,000 and an assessment rate of $0.045 per carton of lemons. In comparison, estimated expenses for 1990–91 are expected to be $780,500. The assessment rate was $0.05 per carton of lemons. Assessment income for 1991–92 is estimated at $765,000 based on anticipated fresh domestic shipments of 17,000,000 cartons of lemons. The remaining $60,000 in the expenses vill be covered by reserve funds ($40,000) and interest income ($20,000).

Major budget categories for 1991–92 are $209,500 for field and compliance expenses, $217,500 for administrative and office salaries, and $118,000 for Committee member expenses. Comparable 1990–91 estimated expenditures are $225,250, $209,856, and $86,000, respectively.

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

Based on the foregoing, it is found and determined that a comment period of 10

days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is proposed to be amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

2. A new § 910.229 is added to read as follows:

**§ 910.229 Expenses and assessment rate.**

Expenses of $825,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1991–92 fiscal year ending on July 31, 1992. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: July 1, 1991.

William J. Doyle,

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–16177 Filed 7–5–91; 8:45 am]

BILLING CODE 3410–02–M

---

**7 CFR Part 910**

**[FV-91-289PR]**

## Lemons Grown in California and Arizona; Proposed Weekly Levels of Volume Regulation for the 1991-92 Season

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule invites comments on the need for regulation of the quantity of fresh California-Arizona lemons that may be shipped to domestic markets, the shipping schedule, and the application of volume regulation for the 1991–92 lemon season. Consistent with program objectives, such action may be needed to establish and maintain orderly marketing conditions throughout the 1991–92 fiscal year. This proposal is based on a marketing policy which was unanimously adopted by the Lemon Administration Committee (Committee) on May 7, 1991. The Committee is responsible for the local administration of the marketing order covering lemons grown in California and Arizona.

**DATES:** Comments must be received by August 7, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, room 2524–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456. Such comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to a "non-major" rule.

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

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

There are approximately 70 handlers of California-Arizona lemons who are subject to regulation under the marketing order and approximately 2,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona lemons may be classified as small entities.

The declaration of policy in the Act includes a provision concerning the establishment and maintanence of such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of an agricultural commodity throughout its normal marketing season in order to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of lemons that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producer returns.

The Committee may recommend to the Secretary the utilization of volume regulation under the order. The major reason for the use of volume regulation is to establish and maintain orderly marketing conditions for lemons and thereby benefit producers through higher returns. Such regulation can at the same time benefit consumers by maintaining adequate supplies of lemons in the marketplace. Thus, volume regulation can be a valuable tool in achieving the goal of market stabilization for California-Arizona lemons.

Prior to evaluating the appropriate level of volume regulation to recommend for a particular week, the Committee considers the following factors: (1) The quantity of lemons in storage; (2) the available amount of lemons for shipment to the principal markets; (3) the trend in consumer income; (4) present and predicted weather conditions; (5) present and prospective prices of lemons; and (6) other relevant factors.

The order also provides a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established for a given week, the Committee calculates the quantity of lemons (allotment) which may be handled by each handler. Certain provisions of the order allow handlers to ship lemons in excess of their allotments, within specified limits, in response to marketing opportunities. Handlers who want to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 38 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may

overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the following week. Handlers may also request upward adjustments and/or on-tree certification to increase their average weekly picks. This allows them to receive and ship a larger amount of lemons during a particular week or weeks. The order also provides off-bloom allotment which allows handlers to handle off-bloom lemons and receive allotment for such lemons prior to the picking of their normal lemon crop. Further, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment. These provisions allow handler flexibility.

In addition, lemons which are handled or disposed of in the following outlets are exempt from volume regulation: (a) Charitable institutions or relief organizations for distribution by such agencies; (b) processing into by-products, including juice; (c) export markets; (d) gift packages; and (e) livestock feed. The marketing and distribution of limited amounts of organic lemons is also exempt from volume regulation, and the Committee may exempt from volume and size regulations any grower, other than one whose principal occupation is food distribution, who sells lemons directly to consumers.

Pursuant to § 910.50 of the order, the Committee is required to submit a marketing policy to the Secretary prior to August 15 recommending volume regulations for the current season. The order authorizes volume and size regulations applicable to fresh shipments of California-Arizona lemons to markets in the United States and to Canada.

The Committee adopted its marketing policy for the 1991–92 fiscal year at its May 7, 1991, meeting in Newhall, California. Other meetings to develop, discuss and review the Committee's marketing policy were held on March 5 and April 30. In addition to Committee members, industry members were present at these meetings.

Preliminary estimates indicate the California-Arizona lemon crop at 36,425 cars for the 1991–92 fiscal year compared to the estimated 35,960 cars produced last year. The Committee estimates District 1, central California, 1991–92 production at 400 cars compared to the 3,921 cars produced in 1990–91. In District 2, southern California, the crop is expected to be 23,000 cars compared to the 19,609 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 13,025 cars compared to the 12,430 cars produced last year.

Based on preliminary data for the period from August 1, 1990, through April 1991 and projections for the remainder of the season, the 1990–91 estimated season average on-tree price for fresh California-Arizona lemons is $8.92 per carton. This is 113 percent of the 1990–91 projected season average parity equivalent price, which is $7.89 per carton. The estimate for the 1991–92 season average on-tree price for California-Arizona fresh lemons is $8.42 per carton. This is 89 percent of the projected 1991–92 season parity equivalent price, which is $9.45 per carton.

Currently, there is a size regulation in effect for lemons grown in California and Arizona which limits the handling of domestic fresh lemons to size 235's (1.82 inches in diameter) and larger in all districts. Size composition of fresh shipments of lemons normally peak in the mid-sizes, 140's and 165's, with 80 to 85 percent of each fiscal year's total fresh shipments averaging 165's (2.13 inches in diameter) and larger. The Committee projects that size composition for the 1991–92 fiscal year will follow the same pattern.

California-Arizona lemons are typically shipped and disposed of in three major distribution channels—domestic fresh, export fresh, and by-products. The fresh outlets are the most profitable, and the best quality fruit usually goes to these markets. The by-products channel (mostly frozen, concentrated lemon juice) is a low-value salvage outlet for the remaining fruit.

In terms of total crop utilization, the Committee estimates as of May 7, 1991, that approximately 17,500 cars of the 1991–92 crop (48 percent) will be utilized in fresh domestic markets compared with an estimated 16,900 cars (46 percent) in 1990–91; fresh exports are projected at 7,350 cars (20 percent of the total 1991–92 crop) compared to an estimated 7,000 cars (20 percent) in 1990–91; and 11,575 cars (32 percent of the 1991–92 lemon crop) will be utilized in by-product channels and other forms of processing compared with an estimated 13,900 cars (34 percent) in 1990–91.

Expressed in terms of percentages, California-Arizona lemons shipped to fresh domestic markets in 1991–92 could increase by nearly 4 percent from 1990–91 estimates; export shipments could increase by 5 percent from 1990–91 estimates; and utilization in by-product channels and other forms of processing in 1991–92 may decrease by about 20 percent from 1990–91.

It is the Department's view, based on the Committee's deliberations and the marketing policy, that the Committee is likely to recommend the implementation of volume regulation for all or a portion of the 1991–92 fiscal year. However, the Committee does not exclude the possibility of a period of time in the fiscal year when volume regulation may not be needed to maintain orderly marketing conditions.

Committee recommendations for volume regulation are in response to several prospective problems that can potentially change crop and market conditions. These problems include inadequate water supplies which poses a threat to the quantity and quality of California-Arizona lemon supplies, the spread of the Mediterranean and Mexican fruit flies in southern California, and above average expenses incurred in protecting exposed corps against freezing temperatures which have contributed to increased farming costs. In addition to these prospective problems, growers and handlers may encounter the normal problems associated with the production, frost protection, storage prevention of sour rot or other decay organisms, packaging, and marketing of California-Arizona lemons.

Furthermore, Committee recommendations for volume regulations during the 1991–92 fiscal year may vary from the estimated shipping projections. Factors that may stimulate increased fresh lemon consumption and necessitate a Committee recommendation for volume regulation in excess of the shipping schedule include: (1) Significant changes in weather patterns in major consuming areas; (2) a regional or national concern for health; or (3) promotional efforts by industry marketing organizations. Factors that could adversely affect lemon demand in the marketplace and necessitate a recommendation for volume regulation at a lower level than indicated by the shipping schedule include: (1) Significant changes in weather conditions; (2) the size composition of existing supplies; (3) the condition of the fruit; (4) transportation problems; or (5) extreme supply fluctuations created by competitive imports.

Based on the information available, the Committee recommended to the Secretary a proposed weekly schedule of the quantities of California-Arizona lemons that can be shipped from the week ending on August 10, 1991, to the week ending on August 1, 1992, if

volume regulation is recommended, approved and implemented during such period. The recommended shipping schedule is based on the initial crop estimate and covers the entire fiscal year. Due to the anticipated normal distribution of lemon sizes and crop conditions, the Committee estimates that fresh domestic shipments this season will be 17,500 cars. This figure may be adjusted to reflect revised crop estimates throughout the season. The shipping schedule is proposed to be specified in a new § 910.1048 of the rules and regulation.

The Department requests that comments be submitted on the need for volume regulation during the 1991–92 fiscal year, the proposed shipping schedule, and the onset and duration of volume regulation. Commenters proposing alternative levels of shipments as well as beginning and ending dates for regulation, including no regulation, for the 1991–92 season should provide as much information as possible in support of their suggested alternatives.

The Department will analyze comments received in response to the proposed rule and, if warranted, issue a final rule which would include an analysis of the comments received. Throughout the season, the Committee meets on a weekly basis to consider current and prospective marketing conditions. If this action is finalized in a final rule and the Committee recommends volume regulations for a specific week at the published shipping schedule level and the Department concurs, no further rule would be issued by the Department.

However, the Committee may recommend amendments to the allotments for the upcoming week and would need to provide adequate justification for a level higher or lower than the published shipping schedule. The Department would analyze such recommendations and justification submitted by the Committee to amend weekly volume regulations. If warranted, the Department would issue a rule to amend the original final rule.

This proposed rule is based on information currently available. As more information becomes available, the Committee may find it necessary to recommend to the Secretary a revision in the shipping schedule proposed herein. The Department will consider the Committee's recommendations and take whatever action is appropriate under the order to achieve the order's purposes and objectives.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is proposed to be amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

2. A new section 910.1048 would be added to read as follows:

**§ 910.1048 Lemon regulation.**

The shipping schedule below establishes the quantities of lemons grown in California and Arizona which may be handled during the specific weeks as follows:

| Week ending | Cartons |
|---|---|
| (a) August 10, 1991 | 320,000 |
| (b) August 17, 1991 | 320,000 |
| (c) August 24, 1991 | 340,000 |
| (d) August 31, 1991 | 340,000 |
| (e) September 7, 1991 | 320,000 |
| (f) September 14, 1991 | 320,000 |
| (g) September 21, 1991 | 310,000 |
| (h) September 28, 1991 | 310,000 |
| (i) October 5, 1991 | 310,000 |
| (j) October 12, 1991 | 310,000 |
| (k) October 19, 1991 | 310,000 |
| (l) October 26, 1991 | 290,000 |
| (m) November 2, 1991 | 300,000 |
| (n) November 9, 1991 | 305,000 |
| (o) November 16, 1991 | 315,000 |
| (p) November 23, 1991 | 290,000 |
| (q) November 30, 1991 | 265,000 |
| (r) December 7, 1991 | 300,000 |
| (s) December 14, 1991 | 330,000 |
| (t) December 21, 1991 | 330,000 |
| (u) December 28, 1991 | 280,000 |
| (v) January 4, 1992 | 295,000 |
| (w) January 11, 1992 | 300,000 |
| (x) January 18, 1992 | 275,000 |
| (y) January 25, 1992 | 300,000 |
| (z) February 1, 1992 | 300,000 |
| (aa) February 8, 1992 | 300,000 |
| (bb) February 15, 1992 | 310,000 |
| (cc) February 22, 1992 | 310,000 |
| (dd) February 29, 1992 | 320,000 |
| (ee) March 7, 1992 | 330,000 |
| (ff) March 14, 1992 | 340,000 |
| (gg) March 21, 1992 | 340,000 |
| (hh) March 28, 1992 | 340,000 |
| (ii) April 4, 1992 | 340,000 |
| (jj) April 11, 1992 | 345,000 |
| (kk) April 18, 1992 | 345,000 |
| (ll) April 25, 1992 | 360,000 |
| (mm) May 2, 1992 | 370,000 |
| (nn) May 9, 1992 | 380,000 |
| (oo) May 16, 1992 | 395,000 |
| (pp) May 23, 1992 | 395,000 |
| (qq) May 30, 1992 | 400,000 |
| (rr) June 6, 1992 | 415,000 |
| (ss) June 13, 1992 | 415,000 |
| (tt) June 20, 1992 | 415,000 |
| (uu) June 27, 1992 | 410,000 |
| (vv) July 4, 1992 | 400,000 |
| (ww) July 11, 1992 | 400,000 |
| (xx) July 18, 1992 | 390,000 |
| (yy) July 25, 1992 | 380,000 |
| (zz) August 1, 1992 | 370,000 |

Dated: July 1, 1991.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–16131 Filed 7–5–91; 8:45 am]

BILLING CODE 3410–02–M

## 7 CFR Parts 916 and 917

**[Docket No. FV–91–286PR]**

## Proposed Expenses and Assessment Rates for Specified Marketing Orders

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish assessment rates for the 1991–92 fiscal year (March 1–February 29) under Marketing Order Nos. 916 and 917. These expenditures and assessment rates are needed by the Nectarine Administrative Committee and Peach Commodity Committee established under the orders to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committees to perform their duties and the orders to operate.

**DATES:** Comments must be received by July 18, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreements and Marketing Order Nos.

916 (7 CFR part 916) regulating the handling of nectarines grown in California, and 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are about 300 handlers of California peaches and nectarines subject to regulation under Marketing Order Nos. 916 and 917 and about 1,800 producers of these commodities in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the packages of fresh fruit expected to be shipped under the orders. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee (NAC) met May 1, 1991, and unanimously recommended 1991–92 expenditures of $4,276,873. In comparison, 1990–91 fiscal year actual expenditures were $3,119,055. Major NAC expenditures projected for 1991–92, with actual 1990–91 expenditures in parenthesis, are: Salaries and employee benefits, $292,589 ($211,271); production research, $127,128 ($92,330); market development and promotion, $2,372,267 ($1,650,270); inspection, $1,036,440 ($951,897), and uncollected assessment accounts, $250,000 ($44,077).

The NAC estimates 1991–92 assessment income will be $2,902,505. This amount is based on assessments totaling $3,152,505 (17,274,000 packages of assessable nectarines shipped at $0.1825 per 25-pound package or equivalent), less $250,000 in anticipated uncollected contested assessments. Last year's assessment rate was 18 cents per package. Assessment income would be supplemented with interest income estimated at $40,000 and income from export development and research subsidies from State and Federal agencies estimated at $451,000. In addition, the NAC had $666,477 in uncontested reserves as of March 1, 1991, an amount well within the maximum authorized. Total projected income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

The Peach Commodity Committee (PCC) met May 2, 1990, and unanimously recommended 1991–92 expenditures of $3,887,673. In comparison, 1990–91 fiscal year actual expenditures were $2,996,066. Major PCC expenditures proposed for 1991–92, with actual 1990–91 expenditures in parenthesis, are: salaries and employee benefits, $262,750 ($197,486); production research, $141,321 ($63,738); market development and promotion, $2,092,765 ($1,557,180); inspection, $1,088,990 ($1,009,631), and uncollected assessment accounts, $115,000 ($7,158).

The PCC estimates 1991–92 assessment income will be $2,840,830. This amount is based on assessments totaling $2,955,830 (15,557,000 packages of assessable peaches shipped at $0.19 per 25-pound package equivalent), less $115,000 in anticipated uncollected contested assessments. Last year's assessment rate was $0.18 per package. Assessment income would be supplemented with interest income estimated at $34,000 and income from export development and research subsidies from State and Federal agencies estimated at $410,000. In addition, the PCC had $566,148 in uncontested reserves as of March 1, 1991, an amount well within the maximum authorized. Total projected income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

One new line item proposed in both budgets is $20,000 in attorney fees for the USDA-approved defense of committee staff in the wrongful termination lawsuit. The $25,000 ($15,561 spent last year) proposed for "standardization enforcement" would cover part time salaries for two compliance/inspection personnel who inspect tree fruit sold in farmers' markets and small wholesale outlets.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because establishing the levels of expenses and assessment rates for these programs should be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

**List of Subjects in 7 CFR Parts 916 and 917**

Marketing agreements, Nectarines, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR

parts 916 and 917 be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

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

2. A new § 916.228 is added to read as follows:

## PART 916—NECTARINES GROWN IN CALIFORNIA

**§ 916.228 Expenses and assessment rate.**

Expenses of $4,276,873 by the Nectarine Administrative Committee are authorized, and an assessment of $0.1825 per 25-pound package or equivalent of assessable nectarines is established for the fiscal year ending February 28, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

## PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.252 is added to read as follows:

**§ 917.252 Expenses and assessment rate.**

Expenses of $3,887,887,673 by the Peach Commodity Committee are authorized, and an assessment of $0.19 per 25-pound package or equivalent of assessable peaches is established for the fiscal year ending February 29, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: July 1, 1991.

William J. Doyle,

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–16132 Filed 7–5–91; 8:45 am]

BILLING CODE 3410–02–M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 91–ASO–14]

### Proposed Establishment of Transition Area, Port Gibson, MS

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish the Port Gibson, MS Transition Area. A Special Instrument Approach Procedure has been developed to serve the Grand Gulf Heliport. This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface along the final approach and missed approach segments of the instrument approach procedure. This action is necessary in order to provide additional controlled airspace protection of instrument flight rules (IFR) helicopters executing the instrument approach procedure in instrument meteorological conditions.

**DATES:** Comments must be received on or before: August 29, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, System Management Branch, Docket No. 91–ASO–14, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

**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 aspects of the proposal. Communications should identify the airspace docket 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. 91–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received 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 the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Port Gibson, MS Transition Area. A special instrument approach procedure has been developed to serve the Grand Gulf Heliport. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface along the final approach and missed segments of the instrument approach procedure. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

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 "major rule" under Executive Order 12291; (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**

Aviation safety, Transition area.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Port Gibson, MS [New]**

That airspace extending upward from 700 feet above the surface within 2.5 miles each side of the Natchez VOR/DME 027° radial extending from 20.9 to 27.2 miles northeast of the VOR/DME.

Issued at East Point, Georgia, on June 25, 1991.

Don Cass,

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 91–16081 Filed 7–5–91; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 416

**[Regulations No. 16]**

**RIN 0960–AC38**

### Supplemental Security Income for the Aged, Blind, and Disabled; Subpart K–Income; Parent-to-Child Deeming

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** Under the current Supplemental Security Income regulations, three formulas are used to calculate the amount of income deemed to a child from his or her ineligible parent(s) when they are living together. The proposed rule would eliminate the formula currently used when the parent(s) has only earned income and the formula used when the parent(s) has only unearned income. Instead, the proposed rules would require that only the method currently used in cases where the parent(s) has both earned and unearned income be used to calculate the amount of parental income to be deemed. Using a single method to calculate the parental income to be deemed would eliminate certain anomalies which sometimes occur when more than one of the three computational methods currently used must be applied in the same case and when there is a change in the type of income received (e.g., an increase in unearned income), resulting in a change in computation but no correlating change in the deemed amount.

**DATES:** Your comments will be considered if we received them no later than September 6, 1991.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Irving Darrow, Esq., Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1755.

**SUPPLEMENTARY INFORMATION:**

Section 1614(f)(2) of the Social Security Act (the Act), as amended (42 U.S.C. 1382c(f)(2)) states:

> For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

This provision of the law is intended to recognize the obligation of a parent to support a minor child. The Secretary of Health and Human Services (the Secretary) has been given broad discretion under section 1614(f)(2) of the Act to set forth rules to determine what portion of a parent's income and resources may be deemed to a child applying for or eligible for benefits under the Supplemental Security Income (SSI) program.

In implementation of section 1614(f)(2), the Secretary has set forth the rules in 20 CFR 416.1165 for determining how we deem income to an eligible child from an ineligible parent(s). Under the regulation at § 416.1165(a), we first determine the amount of earned and unearned income of the ineligible parent(s). Next, according to the rules in § 416.1165(b), we deduct an allocation for each ineligible child in the household. We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from the ineligible parent(s) (§ 416.1165(c)). Such allocations are deducted first from the unearned income of the parent(s) and then, if any allocation remains, from the earned income of the parent(s). Finally, we determine the amount to be allocated for the ineligible parent(s) using one of the formulas in § 416.1165(d). The formula in § 416.1165(d)(1) is applicable where all parental income is earned. The formula in § 416.1165(d)(2) is applicable where all parental income is unearned. The formula in § 416.1165(d)(3) applies where the parental income is both earned and unearned. We use the formula which reflects the type of income which the parent(s) has after exclusion under § 416.1161(a) have been applied and allocations have been deducted for any ineligible children in the household and for eligible aliens sponsored by the parent(s).

The use of these three formulas has resulted in the following anomalies:

1. We sometimes deem less income to the child in situations where parental unearned income has increased or has just begun to be received while earned income has not changed or has increased.

Two factors are involved. First, in the earned income only computation, after deducting $85 (the standard general and earned income exclusions) plus twice the applicable Federal benefit rate (FBR) we count 100 percent of the remaining earned income when computing a child's deemed income. However, in the earned and unearned income computation, after deducting any of the $20 general income exclusion not applied to unearned income, the $65 earned income exclusion, and the applicable FBR, we count only 50 percent of the remaining earned income in computing deemed income. Second, the amount of unearned income also affects whether the anomaly will occur.

2. In some situations, with no change in parental income, we deem more income when an ineligible child is born, or when another ineligible child qualifies for an allocation. This occurs when application of the additional ineligible child allocation eliminates unearned income in the deeming computation and the earned income only computation begins to be used.

The following examples illustrate the anomalies that occur under the current rules for determining deemed income amounts.

*Anomaly 1—Current Rules*

| | |
|---|---|
| Family A (Mother, Father, and Eligible Child): | |
| Earned income | $1,500 |
| Earned income | 1,500 |
| General and earned income exclusions | −85 |
| Remainder | 1,415 |
| Parental allocation (2 × couple FBR) | −1,158 |
| Deemed income | 257 |
| Total Parental Income | 1,500 |
| Deemed Income | 257 |
| Family B (Mother, Father, and Eligible Child): | |
| Earned income | 1,500 |
| Unearned income | 5 |
| Unearbed income | 5 |
| General income exclusion | 20 |
| Remaining general income exclusion | 15 |
| Earned income | 1,500 |
| Remaining general exclusion ($15) plus earned income exclusion ($65) | −80 |
| Remainder | 1,420 |
| ½ remainder | −710 |
| Remainder | 710 |
| Parental allocation (1 × couple FBR) | −579 |
| Deemed income | 131 |
| Total Parental Income | 1,505 |
| Deemed Income | 131 |
| Family A Deemed Income | 257 |
| Family B Deemed | −131 |
| Difference in deemed income | 126 |

*Anomaly 2—Current Rules*

| | |
|---|---|
| Family A (Mother, Father, Eligible Child): | |
| Earned income | $1,500.00 |
| Unearned income | 125.00 |
| Unearned income | 125.00 |
| General income exclusion | −20.00 |
| Remaining unearned income | 105.00 |
| Earned income | 1,500.00 |
| Earned income exclusion | −65.00 |
| Remainder | 1,435.00 |
| ½ remainder | −717.50 |
| Remaining earned income | 717.50 |
| Remaining unearned income | +105.00 |
| Total countable income | 822.50 |
| Parental allocation (1 × couple FBR) | −579.00 |
| Deemed Income | 243.50 |

*Anomaly 2—Current Rules*—Continued

| | |
|---|---|
| Total Parental Income | 1,625.00 |
| Deemed Income | 243.50 |
| Family B (Mother, Father, Eligible Child, Ineligible Child) | |
| Earned income | 1,500.00 |
| Unearned income | 125.00 |
| Unearned income | 125.00 |
| Ineligible child allocation | −193.00 |
| Remaining unearned income | 0.00 |
| Earned income | 1,500.00 |
| General plus earned income exclusions | −85.00 |
| Remainder | 1,415.00 |
| Parental allocation (2 × couple FBR) | −1,158.00 |
| Deemed Income | 257.00 |
| Total Parental Income | 1,625.00 |
| Deemed Income | 257.00 |
| Family B Deemed Income | 257.00 |
| Family A Deemed Income | −243.50 |
| Difference in Deemed Income | 13.50 |

We propose to eliminate the anomalies by eliminating two of the three formulas now being used to determine the amount of deemed parental income; i.e., the formula applicable to a parent having only earned income (§ 416.1165(d)(1)) and the formula applicable to a parent having only unearned income (§ 416.1165(d)(2)). The remaining formula, currently applicable to a parent having both earned and unearned income (§ 416.1165(d)(3)), would be applicable irrespective of the type of parental income. We are proposing this particular solution because it eliminates the anomalies discussed, parallels the way we currently treat the combination of earned and unearned income, promotes the goal of program simplification, and does not disadvantage any individuals already on the rolls.

The following illustrations demonstrate how the anomalies shown above would be eliminated by use of the single parent-to-child deeming formula.

*Anomaly 1—Eliminated Under Proposed Rules*

| | |
|---|---|
| Family A (Mother, Father, Eligible Child): | |
| Earned income | $1,500.00 |
| Earned income | 1,500.00 |
| General & earned income exclusions | −85.00 |

*Anomaly 1—Eliminated Under Proposed Rules*—Continued

| | |
|---|---|
| Remainder | 1,415.00 |
| ½ remainder | −707.50 |
| Remainder | 707.50 |
| Parental allocation (1 × couple FBR) | −579.00 |
| Deemed income | 128.50 |
| Total Parental Income | 1,500.00 |
| Deemed Income | 128.50 |
| Family B (Mother, Father, Eligible Child): | |
| Earned income | $1,500.00 |
| Unearned income | 5.00 |
| Unearned income | 5.00 |
| General income exclusion | −20.00 |
| Remaining general income exclusion | 15.00 |
| Earned income | 1,500.00 |
| Remaining general exclusion ($15) plus earned income exclusions ($65) | −80.00 |
| Remainder | 1,420.00 |
| ½ remainder | −710.00 |
| Remainder | 710.00 |
| Parental allocation (1 × couple FBR) | −579.00 |
| Deemed income | 131.00 |
| Total Parental Income | 1,505.00 |
| Deemed Income | 131.00 |
| Family B Deemed income | 131.00 |
| Family A Deemed income | −128.50 |
| Difference in deemed income is direct result of difference in income | 2.50 |

*Anomaly 2—Eliminated Under Proposed Rules*

| | |
|---|---|
| Family A (Mother, Father, Eligible Child): | |
| Earned income | $1,500.00 |
| Unearned income | 125.00 |
| Unearned income | 125.00 |
| General income exclusion | −20.00 |
| Remaining unearned income | 105.00 |
| Earned income | 1,500.00 |
| Earned income exclusion | −65.00 |
| Remainder | 1,435.00 |
| ½ remainder | −717.50 |
| Remaining earned income | 717.50 |
| Remaining unearned income | +105.00 |
| Total countable income | 822.50 |
| Parental allocation (1 × couple FBR) | −579.00 |
| Deemed income | 243.50 |

*Anomaly 2—Eliminated Under Proposed Rules*—Continued

| | |
|---|---|
| Total Parental Income | 1,678.00 |
| Deemed income | 243.50 |
| Family B (Mother, Father, Eligible Child, Ineligible Child): | |
| Earned income | 1,500.00 |
| Unearned income | 125.00 |
| Unearned income | 125.00 |
| Ineligible child allocation | −193.00 |
| Remaining unearned income | 0.00 |
| Earned income | 1,500.00 |
| General & earned income exclusions | −85.00 |
| Remainder | 1,415.00 |
| ½ remainder | −707.50 |
| Remaining earned income | 707.50 |
| Parental allocation (1 × couple FBR) | −579.00 |
| Deemed income | 128.50 |
| Total Parental Income | 1,678.00 |
| Deemed income | 128.50 |
| Family A Deemed income | 243.50 |
| Family B Deemed income | −128.50 |
| Difference in deemed income is direct result of difference in family composition | 115.00 |

## Regulatory Procedures

*Executive Order No. 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

*Paperwork Reduction Act of 1980*

These proposed regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 13–807, Supplemental Security Income Program)

## List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: April 23, 1991.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

## PART 416—[AMENDED]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; Sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369, 98 Stat. 1144.

2. In § 416.1165, the section heading and paragraphs (d) and (h) are revised to read as follows:

**§ 416.1165 How we deem income to you from your ineligible parent(s).**

* * * * *

(d) Allocations for your ineligible parent(s). We next deduct allocations for your parent(s). We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)). The allocations are calculated as follows:

(1) We first deduct $20 from the parents' combined unearned income, if any. If they have less than $20 in unearned income, we subtract the balance of the $20 from their combined earned income.

(2) Next, we subtract $65 plus one-half the remainder of their earned income.

(3) We total the remaining earned and unearned income and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

* * * * *

(h) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in § 416.1160(b)(2) applies. The Federal benefit rates are those effective January 1, 1990.

*Example 1.* Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $365 per month and his father earns $1,025 per month. Henry and his brother have no income. First, we allocate $193 for Henry's brother from the unearned income of $365. This leaves $172 in unearned income. We reduce the unearned income further by the $20 general income exclusion, leaving $152. We then reduce the $1,025 of earned income by $65 leaving a remainder of $960. Then we subtract one-half of the remainder, leaving $480. From the total remaining income of $652, we subtract $579 (the Federal benefit rate for a couple), as the allocation for the parents, leaving $73 to be deemed as Henry's unearned income. Henry has no other income. We then apply Henry's $20 general income exclusion which reduces his countable income to $53. Since that amount is less than the $386 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See § 416.420.

*Example 2.* James and Tony are disabled children who live with their mother. The children have no income but their mother receives $506 a month in unearned income. We reduce the unearned income by the $20 general income exclusion, leaving $486. We then subtract the amount we allocate for the mother's needs, $386 (the amount of the Federal benefit rate for an individual). The amount of income to be deemed is $100. We divide the deemed income equally between the two children ($50 each) as unearned income. We then apply the $20 general income exclusion, leaving each child with $30 countable income. The $30 of unearned income is less than the $386 Federal benefit rate for an individual, so the children are eligible. We then determine each child's benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See § 416.420.

*Example 3.* Mrs. Jones is the ineligible parent of two disabled children, Beth and Linda, and has sponsored an eligible alien, Mr. Sean. Beth, Linda, and Mr. Sean have no income; Mrs. Jones has unearned income of $870. We reduce the mother's unearned income by the $20 general income exclusion, leaving $850. Then we reduce her income by an allocation of $193 for Mr. Sean, which leaves a balance of $657. Next, we subtract the amount we allocate for the mother's needs, $386 (the amount of the Federal benefit rate for an individual). The balance of $271 to be deemed is divided equally between Beth and Linda. Each now has unearned income of $135.50 from which we deduct the $20 general income exclusion, leaving each child with $115.50 countable income. Since this is less than the $386 Federal benefit rate for an individual, the girls are eligible. We will use income in a prior month to compute their benefits if retrospective accounting applies. See § 416.420. (For the way we deem the mother's income to Mr. Sean, see examples No. 3 and No. 4 in § 416.1166a.)

[FR Doc. 91–16048 Filed 7–5–91; 8:45 am]

BILLING CODE 4190–11–M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

**[DOD 6010.8-R]**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements changes required by the National Defense Authorization Act for Fiscal Year 1991 and the Department of Defense Appropriations Act for Fiscal Year 1991, as amended by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, concerning mental health services under CHAMPUS. The Acts change the existing day limits and waiver criteria for acute inpatient psychiatric care, introduce new day limits for residential treatment center care, and protect against improper economic interests in referrals to inpatient facilities by health care professionals. This proposed rule also established a partial hospitalization benefit.

**DATES:** Written comments must be received on or before August 7, 1991.

**ADDRESSES:** Forward to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Initiatives Branch, Mental Health Unit, Aurora, CO 80045-6900.

**FOR FURTHER INFORMATION CONTACT:** Mary K. Wert, OCHAMPUS, (303) 361-8336.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, and the Defense Appropriations Act for Fiscal Year 1991, Public Law 101-511, Congress firmly addressed the problem of spiraling costs for mental health services under CHAMPUS. As stated by the House Armed Services Committee:

> The cost of mental illness and substance abuse is of particular concern to the committee. While CHAMPUS expenditures have generally increased by 50 percent between 1986 and 1989, CHAMPUS mental health expenditures have more than doubled. Last year mental health costs accounted for about one-quarter of CHAMPUS's total spending, far above the typical proportion in private employers' health care plans.
>
> Closer inspection of CHAMPUS costs shows that children and adolescents (dependents of active-duty and retired military personnel) are particularly heavy users of inpatient mental health care. Care in hospitals and residential treatment centers (RTCs) accounts for about 80 percent of their total mental health costs * * *
>
> Thus, control of inpatient costs, particularly for children and adolescents, is essential to slowing the rise in CHAMPUS mental health expenditures.

H. Rept. 101-665, p. 289. The Senate Appropriations Committee sounded the same call:

> In recent years, CHAMPUS mental health costs have increased faster than other elements of the benefit package. Mental health costs more than doubled between 1986 and 1989 from $303,000,000 to $633,000,000. In 1989, mental health care presented about 25 percent of the total CHAMPUS program costs. In contrast, private sector firms' average mental health cost was about 11 percent of total costs. Mental health costs in the Blue Cross/Blue Shield Federal employee plan, which originally served as a model for CHAMPUS, represented about 4 percent of total costs.
>
> CHAMPUS mental health benefits are more generous than plans available to Federal or private sector employees * * *.
>
> The Committee feels that the time has come to address the ever-increasing cost of mental health care provided under CHAMPUS and has included a general provision which establishes certain limitations with respect to mental health care.

S. Rept. No. 101-521, p. 43.

Motivated by the desire to bring CHAMPUS mental health care costs under control, Congress—in both the Authorization and Appropriations Acts—established certain benefit changes and management procedures and required that they take effect February 15, 1991. These statutes made two principal changes. First, they established new day limits for inpatient mental health services—30 days for acute care for patients 19 years of age and older, 45 days for acute care for patients under 19 years of age, and 150 days of residential treatment—each of these limits subject to waiver in special cases after review by an outside expert that takes into account the level, intensity and availability of the care needs of the patient. Second, the statutes mandated prior authorization for all nonemergency inpatient mental health admissions, with required certification of emergency admissions within 72 hours.

In the words of the Conference Committee report on the Appropriations Act, the new statutory language "restricts CHAMPUS mental health benefits for eligible beneficiaries and requires preadmission authorization before services are provided except for emergencies." H. Conf Rept. No. 101-938, p.128.

However, in March of 1991, Congress decided to "delay the effective date of the reduction in CHAMPUS mental health benefits required by" the two statutes based on a judgment that "these benefits should not be reduced during a period when the requirement for dependent mental health care is increasing because of the stresses of Operation Desert Storm." S. Rept. No. 102-18, p. 6-7. Accordingly, in section 316 of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, Congress delayed from February 15, 1991, until October 1, 1991, the effective date of the new statutory mandates.

In the meantime, DOD had issued, February 15, 1991, an interim final rule to implement the new requirements, 56 FR 6268. Thus, after the 1991 Congressional action, DOD withdrew the interim final rule, 56 FR 13,758 (April 4, 1991), and went back to the drawing board. The decision was made to split the subject matter of the interim rule into two proposed rules, the first dealing with the preadmission authorization program, which is not dependent on new statutory authority, and the second dealing with the benefit changes Congress postponed until October 1. This is the second proposed rule.

In developing both of these proposed rules, we considered major comments received in response to the interim final rule. Because this is a proposed rule, we do not attempt to respond to all comments received, but we note in several places below matters concerning which comments led us to revise provisions of the interim rule.

### B. Provisions of this Proposed Rule Implementing New Statutory Requirements

#### *1. Day Limits and Waiver Authority*

This proposed rule would amend the regulation to reflect the new Congressionally mandated day limits and waiver criteria. The present 60-day acute care limit and waiver criteria based upon danger to self or others will be replaced with the new day limits and waiver criteria for mental health services provided on and after October 1, 1991. The interim rule addressed the new day limits in relation to a "benefit year," defined as a 365-day period beginning on the first date of covered care. The current method applies day limits on a calendar year basis, a method that produces inequalities in benefits based solely on the calendar. The interim rule also made provision for beneficiaries who received acute care

between January 1, 1991, and February 15, 1991, by generally counting those days for purposes of the new day limits.

A number of commenters on the interim rule objected to these provisions, primarily on the grounds that it would be administratively difficult to keep track of individual "benefit years." In addition, at least one commenter suggested a fiscal year basis for applying the day limits, the same basis as CHAMPUS uses for the annual deductible and catastrophic payment limits. We believe there is some merit to these suggestions.

On the other hand, we continue to believe that automatically restarting the day count based solely on the calendar produces results that cannot be squared with clear Congressional intent. For example, in the case of an RTC admission 150 days before the end of the year, the arrival of the first day of the year would start a new 150 day count. This would result in that patient having a 300 day stay before even being reviewed under the waiver criteria to determine whether any care after 150 days was actually necessary. This result is clearly inconsistent with what Congress intends to happen.

Therefore, in this proposed rule, we suggest a middle ground position. The day limits would generally be based on fiscal years, except that if the applicable number of days is reached during a single admission, the day limit waiver will also be required. In addition, all day counts will begin October 1, 1991. No days of care received prior to that date will be counted. It should be noted again that the day limits do not result in a rigid limit on benefits, but only in triggering the waiver review process.

This proposed rule would also establish waiver criteria consistent with the new statutory provisions. To give meaning to the statutory day limits, the rule establishes a presumption against the appropriateness of inpatient services beyond those limits. This presumption can be overcome, however, by demonstrating that a true need exists. The criteria that would be applied to this are the same criteria used to consider medical or psychological necessity at the admission and concurrent review stages. These criteria were spelled out in the recent proposed rule concerning preadmission review procedures. (Regulatory citations contained in this proposed rule include several paragraphs from the recent proposed rule.)

To implement the new statutory mandates for intensive review of medical/psychological necessity to exceed day limits, the proposed rule would focus on the patient's progress under the patient's individualized diagnosis/treatment plan. In unusual cases in which services beyond the maximum day limits are needed, the emphasis is on adopting necessary adjustments to the treatment plan and completing necessary services to permit discharge or transfer to less intensive levels of care. The primary thrust is on appropriate, high quality, medically necessary care as demonstrated by adequate documentation and review.

*2. Economic Interest Exclusion*

As required by the Defense Appropriations Act, this proposed rule would exclude CHAMPUS payment for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a health care professional having an economic interest in the facility to which the patient is referred, unless coverage is granted by a waiver. The Congressional purpose of this requirement is to protect against improper economic motivations by individual providers in referring patients to inpatient facilities.

In the interim rule, we did not attempt a further regulatory definition of "economic interest." We invited providers to suggest some types of relationships which they think should be considered outside the scope of the term. We asked such commenters to describe actual circumstances and explain why those circumstances are beyond the scope of apparent Congressional concern which underlies this provision.

Although a number of commenters express disapproval of the statutory requirement and the restatement of it in the interim rule, almost no commenters responded to our request for specific examples. Thus, like the interim rule, this proposed rule would not establish a definition of "economic interest" more specific than that found in the committee language. If a situation arises, however, wherein a decision is reached to exclude CHAMPUS payment solely on the basis of a provider's economic interest in the referral facility, the normal CHAMPUS appeals process will be available to the provider.

In addition, in this proposed rule we have clarified the procedure for granting a waiver from the economic interest exclusion. The proposed rule states that a waiver request will be considered in connection with the request for preadmission authorization. The only additional requirement would be that the economic interest be disclosed so that the criteria for medical/psychological necessity can be applied with knowledge of the economic interest. This will assure that the admission is not improperly affected by the economic interest.

**C. Establishment of Psychiatric Partial Hospitalization Program**

A partial hospitalization benefit has been the subject of study by OCHAMPUS for a number of years. OCHAMPUS has been reluctant to establish this benefit without some mechanism to control utilization. Without these controls, partial hospitalization can become a more expensive substitute for outpatient care, rather than—as intended—a less expensive substitute for inpatient care. However, now that an effective utilization review mechanism is in place, we propose to proceed with the establishment of a partial hospitalization program.

The reimbursement rate for full-day partial hospitalization is proposed to be set at one-third the average per diem rate CHAMPUS pays for acute inpatient mental health care, adjusted for region of the country. This proposed rate is based on health care studies suggesting that a reimbursement rate for partial hospitalization of one third the rate for acute inpatient mental health care is, on average, a reasonable reflection of the cost of providing this care. We believe that this reimbursement limitation best suits the needs of the government while providing sufficient financial incentive for facilities and professional providers to appropriately use this level of care. We also believe that by classifying partial hospitalization as an inpatient level of care there will be no disincentive to the beneficiary caused by the higher cost-share associated with outpatient care and that the utilization management techniques in place for inpatient care will serve as a deterrent to inappropriate utilization.

The proposed rule establishes partial hospitalization programs as Specialized Treatment Facilities. It also limits partial hospitalization programs to those which are hospital-based. This is an issue on which we especially solicit public input. On one hand, partial hospitalization is a new benefit and there is something to be said for gaining experience with a program limited to hospitals before addressing the more difficult issues regarding free standing facilities. On the other hand, this approach may cause us to miss opportunities in the short-term to increase the availability of high quality, cost-effective care for our beneficiaries. The proposed rule reflects the more limited approach, but we are keeping

both options open pending consideration of public comments.

We are in a similar posture in connection with the issue of whether the per diem amount should be an all-inclusive rate or should permit separate billing for professional services. We favor the all-inclusive rate approach on the grounds of administrative simplicity and creating incentives for cost-effective services. On the other hand, prevailing practices in the provider community may complicate things. The proposed rule reflects our initial preference for all-inclusive rate approach. However, we are keeping the options open. We are particularly interested in comments providing specific factual information on current arrangements in the provider community and how they would be affected.

This proposed rule defines partial hospitalization as a benefit for patients who have a significant mental disorder but who are able to maintain themselves in the community with appropriate support, limits benefits to 60 days per fiscal year, requires preadmission certification and concurrent review, and establishes provider certification requirements and reimbursement policy.

We have not in the proposed rule provided exceptions to the 60-day limit. We invite comments on whether a waiver should be allowed, and, if so, the types of cases for which a waiver might be needed and the suggested criteria we might use to evaluate waiver requests.

**D. Other Mental Health Program Revision**

Provider certification categories for mental health specialized treatment facilities (STFs) would be clarified by the proposed rule. Unless a facility type is specifically listed, authorized provider status will not be granted. The statement, "The list is for example only and is not construed as being all-inclusive" is proposed to be deleted from the regulation. The listing of mental health STF facility categories will then be all-inclusive. Provisions have been added for provider certification or substance use disorder treatment facilities and partial hospitalization programs.

**E. Rulemaking Procedures.**

We are soliciting public comments on this proposed rule. We will address these comments in connection with the final rule, which will be issued this summer.

Regarding other regulatory procedures, Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

Section 605(b) of the Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a major rule under Executive Order 12291. Also, we certify that this rule will not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. For the most part, this proposed rule would implement new statutory requirements. Other provisions would relax current regulatory restrictions.

In addition, this rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for part 199 is proposed to continue to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2(b) is proposed to be amended by adding a definition for partial hospitalization in alphabetical order, as follows:

**§ 199.2 Definitions.**

* * * * *

(b) * * *

*Partial hospitalization.* A hospital based program, which meets the criteria in section 199.6.

* * * * *

3. Section 199.4 is proposed to be amended by adding new paragraphs (b)(8), (b)(9) and (b)(10); by adding 5 new sentences to the end of the introductory text of paragraph (c)(3)(ix); and by revising paragraphs (c)(3)(ix)(A)(*4*) and (*5*), (c)(3)(ix)(B)(*2*), and (c)(3)(ix)(C); by adding a new paragraph (f)(2)(v); by revising paragraphs (g)(39), and (g)(72); by redesignating paragraph (g)(73) as paragraph (g)(74) and by adding a new paragraph (g)(73), as follows:

**§ 199.4 Basic program benefits.**

* * * * *

(b) * * *

(8) *RTC day limit.* (i) Benefits for residential treatment are generally limited to 150 days in a fiscal year or 150 days in an admission. The RTC benefit limit is separate from the benefit limit for acute inpatient mental health care.

(ii) *Waiver of the RTC day limit.* (A) There is a statutory presumption against the appropriateness of residential treatment services in excess of the 150 day limit. However, the Director, OCHAMPUS, (or designee) may in special cases, after considering the opinion of the peer review designated by the Director (involving a health professional who is not a federal employee) confirming that applicable criteria have been met, waive the RTC benefit limit in paragraph (b)(8)(i) of this section and authorize payment for care beyond that limit.

(B) The criteria for wavier shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria to the context of waiver request reviews, special emphasis is placed on assuring that the record documents that:

(*1*) Active treatment has taken place for the past 150 days and substantial progress has been made according to the plan of treatment.

(*2*) The progress made is insufficient, due to the complexity of the illness, for the patient to be discharged to a less intensive level of care.

(*3*) Specific evidence is presented to explain the factors which interfered with treatment progress during the 150 days of RTC care.

(*4*) The waiver request includes specific time frames and a specific plan of treatment which will lead to discharge.

(C) Where family or social issues complicate transfer to a lower level of intensity, the RTC is responsible for determining and arranging the supportive and adjunctive resources required to permit appropriate transfer. If the RTC fails adequately to meet this responsibility, the existence of such family or social issues shall be an inadequate basis for a waiver of the benefit limit.

(D) It is the responsibility of the patient's attending clinician to establish, through actual documentation from the medical record and other sources, that the conditions for waiver exist. A waiver request must be received by the reviewer designated by the Director, OCHAMPUS no later than the 135th day of RTC care.

(iii) RTC day limits do not apply to services provided under the program for

the handicapped (section 199.5 of this part) or services provided as partial hospitalization care.

(9) *Acute care day limits.* (i) Payment for inpatient acute hospital care is, in general, statutorily limited as follows:

(A) Adults, aged 19 and over—30 days in a fiscal year or 30 days in an admission.

(B) Children and adolescents, aged 18 and under—45 days in a fiscal year or 45 days in an admission.

(ii) It is the patient's age at the time of admission that determines the number of days available.

(iii) *Waiver of the acute care day limits.* (A) There is a statutory presumption against the appropriateness of inpatient acute services in excess of the day limits set forth in paragraph (b)(9)(i) of this section. However, the Director, OCHAMPUS (or designee) may in special cases, after considering the opinion of the peer review designated by the Director (involving a health professional who is not a federal employee) confirming that applicable criteria have been met, waive the acute inpatient limits described in paragraph (b)(9)(i) of this section and authorize payment for care beyond those limits.

(B) The criteria for waiver of the acute inpatient limit shall be those set forth in paragraph (b)(6)(i) of this section. In applying those criteria in the context of waiver request review, special emphasis is placed on determining whether additional days of acute inpatient mental health care are medically/psychologically necessary to complete necessary elements of the treatment plan prior to implementing appropriate discharge planning. A waiver may also be granted in cases in which a patient exhibits well-documented new symptoms, maladaptive behavior, or medical complications which have appeared in the inpatient setting requiring a significant revision to the treatment plan.

(C) The clinician responsible for the patient's care is responsible for documenting that a waiver criterion has been met and must establish an estimated length of stay beyond the date of the inpatient limit. There must be evidence of a coherent and specific plan for assessment, intervention and reassessment that reasonably can be accomplished within the time frame of the additional days of coverage requested under the waiver provision.

(D) For patients in care at the time the inpatient limit is reached, a waiver should be requested at least one week prior to the limit. For patients being readmitted after having received 30 or 45 days in the fiscal year, the waiver review will be conducted at the time of the preadmission authorization.

(iv) Acute care day limits do not apply to services provided under the program for the handicapped (§ 199.5 of this part) or services provided as partial hospitalization care.

(10) *Psychiatric partial hospitalization services*—(i) *In general.* Partial hospitalization services are those services furnished by a hospital based CHAMPUS-authorized STF and professional providers for the active treatment of a mental disorder. All services must follow an acute clinical model. Partial hospitalization services are covered as a basic program benefit only if they are provided in accordance with paragraph (b)(10) of this section.

(ii) *Criteria for determining medical or psychological necessity of psychiatric partial hospitalization services.* Psychiatric partial hospitalization services will be considered necessary only if all of the following conditions are present:

(A) The patient is suffering from a significant mental disorder as defined in the current Diagnostic and Statistical Manual which interferes with age appropriate functioning.

(B) The patient is unable to maintain himself or herself in the community, with appropriate support, at a sufficient level of functioning to permit an adequate course of therapy exclusively on an outpatient basis (but is able, with appropriate support, to maintain a basic level of functioning to permit partial hospitalization services and presents no substantial imminent risk of harm to self or others).

(C) The patient is in need of crisis stabilization, treatment of an acute mental health disorder, or services as a transition from an inpatient hospital program.

(D) The admission into the partial hospitalization program is based on the development of an individualized diagnosis/treatment plan expected to be effective for that patient and permit treatment at a less intensive level.

(iii) *Preauthorization and concurrent review requirements.* All preadmission authorization and concurrent review requirements and procedures applicable to acute mental health inpatient hospital care in this paragraph (b) of this section are applicable to the partial hospitalization program, except that the criteria for considering medical or psychological necessity shall be those set forth in paragraph (b)(10)(ii) of this section, and no emergency admissions will be recognized.

(iv) *Institutional benefits limited to 60 days.* Benefits for institutional services for partial hospitalization are limited to 60 treatment days (whether a full day or partial day program) in a fiscal year or in an admission. This limit may not be extended by waiver.

(v) *Services and supplies.* If medically or psychologically necessary, the following services and supplies are included in the per diem rate approved for an authorized partial hospitalization program:

(A) *Professional mental health benefits limited.* Professional mental health benefits are limited to a maximum of one session (60 minutes individual, 90 minutes group, etc.) per authorized treatment day not to exceed five sessions in any calendar week.

(B) *Medical services.* Admission physical examinations and related testing are also covered professional benefits.

(C) *Board.* Includes use of the partial hospital facilities such as food service, supervised therapeutically constructed recreational and social activities, and other general services as considered appropriate by the Director, OCHAMPUS, or a designee.

(D) *Patient assessment.* Includes the assessment of each individual accepted by the facility, and must, at a minimum, consist of a physical examination; psychiatric examination; psychological assessment; developmental assessment; family history and assessment; social history and assessment; educational history and assessment; environmental assessment; and recreational assessment. Assessments conducted within 30 days prior to admission to a partial program may be accepted if adequate to permit treatment planning by the partial hospital program.

(E) *Diagnostic services.* Includes clinical laboratory examinations, x-ray examinations, pathological examinations, and machine tests that produce hard copy results.

(F) *Psychological testing.*

(G) *Treatment services.* All services, supplies, equipment and space necessary to fulfill the requirements of each patient's individualized treatment plan. Services must be provided by a CHAMPUS authorized individual professional provider of mental health services under the direction of a doctoral level individual with specific training and expertise in the appropriate mental health field.

(vi) *Social services required.* The facility must provide an active social services component which assures the patient appropriate living arrangements after treatment hours, transportation to and from the facility, arrangement of community based support services, appropriate referral to state agencies for

suspected abuse, and effective after care arrangements, at a minimum.

(vii) *Educational services required.* Programs treating children and adolescents must ensure the provision of a state certified educational component which assures that patients do not fall behind in educational placement while receiving partial hospital treatment. CHAMPUS will not fund the cost of educational services separately from the per diem rate.

(viii) *Family therapy required.* The facility must ensure the provision of an active family therapy treatment component which assures that each patient and family participate at least weekly in family therapy provided by the institution and rendered by a CHAMPUS authorized individual professional provider of mental health services. An exception to this requirement may be granted on a case-by-case basis by the Director, OCHAMPUS, or designee. Generally, such exceptions will be granted only if family therapy is clinically contraindicated.

(c) * * *

(3) * * *

(ix) *Treatment of mental disorders.* * * * In order to qualify for CHAMPUS mental health benefits, the patient must be diagnosed by a licensed, qualified mental health professional to be suffering from a mental disorder, according to the criteria listed in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. Benefits are limited for certain mental disorders, such as specific developmental disorders. No benefits are payable for "Conditions Not Attributable to a Mental Disorder," or V codes. In order for treatment of a mental disorder to be medically or psychologically necessary, the patient must, as a result of a diagnosed mental disorder, be experiencing both physical or psychological distress *and* an impairment in his or her ability to function in appropriate occupational, educational or social roles. It is generally the degree to which the patient's ability to function is impaired that determines the level of care required to treat the patient's condition.

(A) * * *

(*4*) *Psychoanalysis.* Psychoanalysis is covered when provided by a graduate or candidate of a psychoanalytic training institution recognized by the American Psychological Association or the American Psychiatric Association and when preauthorized by the Director, OCHAMPUS, or a designee.

(*5*) *Psychological testing and assessment.* Psychological testing and assessment is generally limited to four hours of testing and two hours of assessment in a fiscal year when medically or psychologically necessary and in conjunction with otherwise covered psychotherapy. Testing or assessment in excess of these limits requires review for medical necessity. Benefits will not be provided for the Reitan-Indiana battery when administered to a patient under age five, for self-administered tests administered to patients under age 13, or for psychological testing and assessment as part of an assessment for academic placement.

* * * * *

(B) * * *

(*2*) *Inpatient psychotherapy.* Coverage of inpatient psychotherapy is based on medical or psychological necessity for the services identified in the patient's treatment plan. As a general rule, up to five psychotherapy sessions per week are considered appropriate. Additional sessions per week or more than one type of psychotherapy sessions performed on the same day (for example, an individual psychotherapy session and a family psychotherapy session on the same day) could be considered for coverage, depending on the medical or psychological necessity for the services. Benefits for inpatient psychotherapy will end automatically when authorization has been granted for the maximum number of inpatient mental health days in accordance with the limits as described in this section 199.4, unless additional coverage is granted by the Director, OCHAMPUS or a designee.

(C) *Covered ancillary therapies.* Includes art, music, dance, occupational, and other ancillary therapies, when included by the attending provider in an approved inpatient, residential or partial hospitalization treatment plan and under the clinical supervision of a licensed doctoral level mental health professional. These ancillary therapies are not separately reimbursed professional services but are included within the institutional reimbursement.

* * * * *

(f) * * *

(2) * * *

(v) *Psychiatric partial hospitalization services.* Institutions and professional services provided under psychiatric partial hospitalization program authorized by paragraph (b)(10) of this section to dependents of active duty members of the Uniformed Services shall be cost shared as inpatient services.

* * * * *

(g) * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes. Services provided by a marriage and family, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in section 199.6. Services provided by alcoholism rehabilitation counselors and certified addiction counselors are covered only when rendered in a CHAMPUS-authorized substance abuse rehabilitation facility and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost-rate.

* * * * *

(72) *Inpatient mental health services.* Services in excess of 30 days in any fiscal year (or in an admission), in the case of a patient nineteen years of age or older, 45 days in any fiscal year (or in an admission) in the case of a patient under 19 years of age, or 150 days in any fiscal year (or in an admission) in the case of inpatient mental health services provided as residential treatment care, unless coverage for such services is granted by a waiver by the Director, OCHAMPUS, or a designee. In cases involving the day limitations, waivers shall be handled in accordance with paragraphs (b)(8) or (b)(9) of this section.

* * * * *

(73) *Improper economic interest in connection with mental health admissions.* Inpatient mental health services (including both acute care and RTC services) are excluded for care received when a patient is referred to a provider of such services by a physician (or other health care professional with authority to admit) who has an economic interest in the facility to which the patient is referred, unless a waiver is granted. Requests for waiver shall be considered under the same procedure and based on the same criteria as used for obtaining preadmission authorization (or continued stay authorization for emergency admissions), with the only additional requirement being that the economic interest be disclosed as part of the request. This exclusion does not apply to services under the program for the handicapped (§ 199.5 of this part) or provided as partial hospital care. If a situation arises where a decision is made to exclude CHAMPUS payment solely on the basis of the provider's economic interest, the normal

CHAMPUS appeals process will be available.

4. Section 199.6 is amended by revising the introductory texts of paragraphs (b)(4)(x)(B) and (b)(4)(x)(B)(*3*); by revising paragraphs (b)(4)(x)(B)(*3*)(*iv*) and (b)(4)(x)(B)(*3*)(*vi*); by removing the NOTE immediately following paragraph (b)(4)(x)(B)(*3*)(*vi*); and by adding new paragraphs (b)(4)(x)(B)(*3*)(vii) and (b)(4)(x)(B)(*4*).

**§ 199.6 Authorized providers.**

* * * * *

(b) * * *

(4) * * *

(x) * * *

(B) *Types of providers.* The following is a list of facilities that have been designated specifically as STFs.

* * * * *

(*3*) *Substance use disorder rehabilitation facilities.* In order to be authorized under CHAMPUS as a provider of substance use detoxification, rehabilitative services, outpatient treatment, and family therapy, substance use rehabilitation facilities, both freestanding facilities and hospital-based facilities, shall operate primarily for the purpose of providing treatment of substance use disorders (on either an inpatient (including partial care) or an outpatient basis) and shall meet the following criteria:

* * * * *

(*iv*) The facility shall be accredited by and shall remain in substantial compliance with standards issued by the Joint Commission on Accreditation of Healthcare Organizations under the Consolidated Standards Manual or shall meet such other requirements as the Director, OCHAMPUS, finds necessary in the interest of the health and safety of the individuals who are furnished services in the facility.

* * * * *

(*vi*) The substance use rehabilitation facility shall not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits shall not be paid for services provided by the substance use rehabilitation facility until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

(*vii*) The substance use rehabilitation facility is not designated by the Health Care Financing Administration as an alcohol and drug abuse hospital reimbursed under the DRG system.

(*4*) *Psychiatric partial hospitalization programs.* Psychiatric partial hospitalization programs must be a distinct part of an inpatient facility program. CHAMPUS reimbursement is limited to programs complying with all requirements of § 199.4(b)(10). In addition, in order for a partial hospitalization program (PHP) to be authorized, the PHP shall comply with the following requirements:

(*i*) The PHP shall comply with the CHAMPUS Standards for Partial Hospitilization Programs and Facilities, as promulgated by the Director, OCHAMPUS.

(*ii*) The PHP shall be specifically accredited by and remain in compliance with standards issued by the Joint Commission on Accreditation of Healthcare Organizations and be licensed to provide PHP services within the applicable jurisdiction they operate.

(*iii*) The PHP shall accept the CHAMPUS-allowable partial hospitalization program rate, as provided in § 199.14(a)(2)(ix) as payment in full for services provided.

(*iv*) The PHP shall comply with all requirements of this section applicable to institutional providers generally concerning claims processing, beneficiary liability, double coverage, utilization and quality review and other matters.

(*v*) The PHP must be fully operational for a period of at least six months before an application for approval may be submitted. The PHP shall not be considered a CHAMPUS-authorized provider nor may any CHAMPUS benefits be paid to the facility for any services provided prior to the date the facility is approved by the Director, OCHAMPUS, or designee.

(*vi*) All assessments and psychotherapies must be provided by a licensed, qualified mental health provider. All other program services shall be provided by trained staff under clinical supervision of a licensed, qualified mental health provider. All care provided CHAMPUS beneficiaries must be under the direction of a doctoral level, CHAMPUS authorized individual professional provider.

(*vii*) The PHP must have a written agreement with at least one backup hospital which specifies that the hospital will accept any and all CHAMPUS beneficiaries transferred for emergency mental health or medical/surgical care. The PHP must have a written agreement with at least one ambulance company which specifies the estimated transport time to each backup hospital.

(*viii*) The partial hospitalization program shall enter into a participation agreement with the Director, OCHAMPUS.

5. Section 199.14 is amended by adding a new paragraph (a)(2)(ix), as follows:

**§ 199.14 Provider reimbursement methods.**

(a) * * *

(B) * * *

(ix) *Per diem payment for psychiatric partial hospitalization services.*

(A) *In general.* Psychiatric partial hospitalization services authorized by § 199.4(b)(1)) and provided by institutional providers authorized under § 199.4(b)(4)(x)(B)(*4*), are reimbursed on the basis of prospectively determined, all-inclusive per diem rates. The per diem payment amount must be accepted as payment in full for all institutional and professional services provided, including broad, routine nursing services, ancillary services, assessments, overhead and any other services for which the customary practice among similar providers is inclusion as part of the institutional charges.

(B) *Professional services included.* Professional services provided by authorized professional providers to a patient in the partial hospitalization program are included in the per diem rate. They may not be separately billed.

(C) *Per diem rate.* For any full day partial hospitalization program, the all-inclusive per diem payment amount is one third of the average inpatient per diem amount for all CHAMPUS inpatient admissions (in both higher volume and lower volume hospitals) covered by paragraph (a)(2) of this section in Federal fiscal year 1990, by Federal census region, updated to the current fiscal year by the same update factor used for inpatient per diem under paragraphs (a)(2)(iv)(C) of this section. For purposes of the preceeding sentence, a full day partial hospitalization program is a program of greater than six hours in length per treatment day. A partial hospitalization program of less than six hours (but more than three hours) per treatment day is paid a per diem rate of 75 percent the rate for a full day program.

(D) *Other requirements.* No payment is due for leave days, for days in which treatment is not provided, or for days in which the duration of the program services was less than three hours.

* * * * *

Dated: July 1, 1991.

**L.M. Bynum,**

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

[FR Doc. 91-16057 Filed 7-5-91; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

**RIN 2900-AF27**

### Disability or Death from Hospitalization, Medical, or Surgical Treatment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning entitlement to benefits when disability or death results from VA hospitalization, medical or surgical treatment, or vocational rehabilitation program. VA's General Counsel has determined that the present regulations preclude payment of benefits in certain cases that fall reasonably within the scope of the benefit contemplated by Congress. The intended effect of this amendment is to expand benefit eligibility.

**DATES:** Comments must be received on or before August 7, 1991. Comments will be available for inspection until August 19, 1991. This change is proposed to be effective on December 24, 1990, the date of the VA General Counsel opinion on which it is based.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, or any other room to which the public may be directed, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until August 19, 1991.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** Title 38, United States Code, section 351 provides that where any veteran has suffered an injury or aggravation of an injury as the result of VA hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation under chapter 31 of 38 U.S.C., and the injury results in additional disability or death, benefits will be awarded in the same manner as if the disability or death were service-connected. The regulatory framework developed by VA to implement this provision is contained at 38 CFR 3.358, and provides for benefits under 38 U.S.C. 351 for additional disability resulting from VA medical treatment which is not properly administered, or for the results of an "accident". "Accident" is currently defined as the unforeseen, untoward results of surgery, medical treatment or hospitalization, not including expected or contemplated risks of surgery, no matter how remote.

In a precedent opinion dated December 24, 1990 (O.G.C. Prec. 99-90), VA's General Counsel held that that definition of "accident" is too restrictive since it could be read to deny benefits for injuries or deaths resulting from events which are to any degree foreseen or foreseeable. The opinion pointed out that the current definition of "accident" does not reflect the dichotomy that exists between a thorough understanding of the risks inherent in medical/surgical intervention and care, and medical science's incomplete understanding of the workings of the human body and the diseases that prey upon it.

VA believes that it would be more appropriate to define "accident" as an event that is unexpected, or not reasonably foreseeable, which results in additional disability or death. Medical and surgical procedures often involve a clearly recognized risk of injury or death. Such results, although undesirable, should not be viewed as accidental because their occurrence is reasonably foreseeable. On the other hand, an event such as infection with the human immunodeficiency virus (HIV) following transfusion from a properly screened blood supply, should establish entitlement to benefits under the provisions of 38 U.S.C. 351 because current blood screening procedures are accurate enough that transmission of the virus is not reasonably foreseeable, i.e., an accident. VA proposes to amend 38 CFR 3.358(c)(3) to implement this liberalizing opinion.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only Va beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects 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.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

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

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

Approved: June 6, 1991.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below.

### PART 3—ADJUDICATION

1. The authority citaton for part 3 continues to read as follows:

**Authority:** 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

**§ 3.358 [Amended]**

2. In § 3.358(c)(3), remove the words "contemplated or" in the first sentence and add, in their place, the words "expected or reasonably"; in the first sentence, remove the words "no matter how remote,"; in the second sentence, remove the words "(an unforeseen, untoward event)" and add, in their place, the words "(an unexpected, not reasonably foreseeable event)".

[FR Doc. 91-16173 Filed 7-5-91; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 680

**[Docket No. 910641-1141]**

**RIN 0648-AE00**

### Western Pacific Precious Corals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Secretary of Commerce (Secretary) proposes an amendment to the regulations implementing the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (FMP). The amendment would make the precious coral fishing permit process and requirements consistent with the permit process and requirements of other fisheries in the Western Pacific, namely the crustacean, bottomfish, and pelagic longline fisheries.

**DATES:** Comments on the proposed rule must be received on or before August 22, 1991.

**ADDRESSES:** Send comments on the proposed rule to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731-7415. Comments on the proposed collection-of-information should be sent to the Director, Southwest Region, NMFS, (see above) and to the Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0204, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213-514-6660), or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808-955-8831).

**SUPPLEMENTARY INFORMATION:** The FMP was approved by the Secretary on May 20, 1980. One of the management measures is a permit program for persons intending to fish for precious corals from the exclusive economic zone (EEZ) of the western Pacific, except from coral beds designated as reserves or refugia. Harvesting of precious corals requires an annual, area specific permit to which appropriate conditions may be attached. An applicant obtains a permit by first completing and submitting a permit application form to the Southwest Region, NMFS. The regulations also specify changes in requirements governing application information, and issuance, expiration, renewal, alteration, replacement, transfer, and display of permits.

As part of an effort to improve the Southwest Region Federal fishing permit program, NMFS is consolidating into one form the different application forms now being used for fishing permits in the western Pacific. The consolidation of forms would allow an applicant for a precious coral fishing permit to use the same application form and provide the same information regarding the vessel owner, vessel operator, and vessel, as a person who applies for a crustacean, bottomfish, and/or pelagic longline permit. Likewise, permit requirements governing change in application information, issuance, expiration, renewal, and alteration of a precious coral fishing permit would be made consistent with all Southwest Region Federal fishing permits.

The intent of the proposed action is to simplify the process by which precious coral fishing permits are initially obtained and subsequently renewed by participants in the fishery, facilitate understanding of the permit requirements, and help reduce the administrative burden of processing fishing permit applications.

## Classification

The proposed rule is published under authority of section 305 of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855, and was prepared with the approval of the Western Pacific Fishery Management Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the precious coral resources of the western Pacific region, and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that the proposed rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by NOAA Directive 02-10, because it would not result in any significant change from the status quo, it is an administrative action that is ongoing or recurring with limited potential for effect on the human environment, and it falls within the scope of the Environmental Impact Statement prepared for the FMP.

The Assistant Administrator has also determined that it is not a major rule requiring a regulatory impact analysis under Executive Order (E.O.) 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, because it does not create any additional burdens. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the permit system, information requested from precious coral fishing permit applicants would be standardized as part of an effort by NMFS to consolidate into one form the different application forms now being used for fishing permits in the western Pacific. An applicant for a precious coral fishing permit would use the same application form and provide the same information on the vessel owner, vessel operator, and vessel, as a person who applies for a crustacean, bottomfish, and/or pelagic longline fishing permit. The public reporting burden for this collection of information is estimated to average 15 minutes per application. This information collection has been approved by the Office of Management and Budget (OMB No. 0648-0204). Send comments on the reporting burden estimates or any other aspects of the collection of information, including suggestions for reducing the burden, to the Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0204, Washington, DC 20503.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of American Samoa, Guam, and Hawaii. This determination has been submitted for review to the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act.

This rule is not an action that will affect any species listed as endangered or threatened under the Endangered Species Act, or any species protected by the Marine Mammal Protection Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

## List of Subjects in 50 CFR Part 680

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 28, 1991.

**Michael F. Tillman,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons stated in the preamble, 50 CFR part 680 is proposed to be amended as follows:

## PART 680—WESTERN PACIFIC PRECIOUS CORALS

1. The authority citation for part 680 continues to read as follows:

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

2. In § 680.2, the following definition is added, in alphabetical order, to read as follows:

**§ 680.2 Definitions.**

* * * * *

*Pacific Area Office* means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822.

* * * * *

3. In § 680.4, paragraphs (b) and (d) through (h) are revised to read as follows:

**§ 680.4 Permits.**

* * * * *

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner, or a designee of the owner, at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and contains at least the following information:

(i) Type of application; whether the application is for a new permit or a renewal; and what permit area it is for;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horsepower;

(xii) Approximate fish hold capacity;

(xiii) Number of crew;

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

* * * * *

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire at 2400 hours local time on December 31 following the effective date of the permit.

(g) *Renewal.* An application for a renewal of a permit must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

* * * * *

[FR Doc. 91-16043 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Intent to Grant an Exclusive License

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

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Del Monte Corporation, San Francisco, California, on U.S. Patent Application Serial No. 07/608,919, "Process for Manufacture of Non-bleeding Maraschino Cherries," filed November 5, 1990.

**DATES:** Comments must be received within 60 calendar days of the date of publication of this Notice in the **Federal Register**.

**ADDRESSES:** Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401-A, BARC-W, Beltsville, Maryland 20705.

**FOR FURTHER INFORMATION CONTACT:** M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

**SUPPLEMENTARY INFORMATION:** The USDA-ARS intends to grant to Del Monte Corporation an exclusive license to practice the aforementioned invention. Notice of Availability was given in the **Federal Register** on March 4, 1991. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Del Monte Corporation has submitted a complete and sufficient application for a license and is collaborating with the Agricultural Research Service under the terms of a Cooperative Research and Development Agreement providing for further development of the invention.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,
*Assistant Administrator.*

[FR Doc. 91-16129 Filed 7-5-91; 8:45 am]

BILLING CODE 3410-03-M

### Cooperative State Research Service

### Joint Council on Food and Agricultural Sciences; 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:* Joint Council on Food and Agricultural Sciences.

*Date:* August 14-16, 1991.

*Time:* 8 a.m.-5 p.m., August 14, 1991, 8 a.m.-5 p.m., August 15, 1991, 8 a.m.-12 noon, August 16, 1991.

*Places:* Inn on the Park and Forest Products Laboratory, Madison, Wisconsin.

*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 meet with the National Agricultural Research and Extension Users Advisory Board (UAB) to review forestry research and extension programs; receive a presentation on Total Quality Management; determine how the Joint Council and the UAB will jointly comply with new responsibilities in the 1990 Farm Bill; and review the 1990 Accomplishments Report Draft.

*Contact Person for Agenda and More Information:* Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, suite 302 Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250-2200; Telephone (202) 401-4662.

Done in Washington, DC, this 21st day of June, 1991.

John Patrick Jordan,
*Administrator.*

[FR Doc. 91-16130 Filed 7-5-91; 8:45 am]

BILLING CODE 3410-22-M

### Food and Nutrition Service

### National Advisory Council on Commodity Distribution Meeting Announcement

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** A meeting of the National Advisory Council on Commodity Distribution is scheduled for August 1 and 2, 1991. The council, established by the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237) meets biannually to advise the Secretary of Agriculture regarding the development of commodity specifications and other program improvements.

**DATES:** The meeting will take place on Thursday, August 1 from 8:30 a.m. to 5 p.m., and Friday, August 2 from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the Hotel Pullman Highland at 1914 Connecticut Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly King, Deputy Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3680.

**SUPPLEMENTARY INFORMATION:** This is the fifth meeting of the National Advisory Council on Commodity Distribution, as established by section 3(a)(3) of Public Law 100-237. The purpose of the council is to provide guidance to the Secretary of Agriculture on regulations and policy development for the Food Distribution Programs with primary emphasis on specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Ms. Alberta C. Frost, Executive Secretary, National Advisory Council on Commodity Distribution, USDA, Food

and Nutrition Service, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302. Comments may be filed with Alberta C. Frost before or after the meeting.

Dated: June 28, 1991.

Betty Jo Nelsen,

*Administrator.*

[FR Doc. 91-16128 Filed 7-5-91; 8:45 am]

BILLING CODE 3410-30-M

## Office of International Cooperation and Development

### Cooperative Agreement; Langston University

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

**ACTIVITY:** OICD intends to enter into an agreement with Langston University to provide partial funding support for collaborative international research on year-round cashmere production.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1991 (FY1991) to enter into an agreement with Langston University to collaborate on international research on the use of melatonin and breeding for year-round cashmere production. Approximately $20,000 will be made available to the University's Institute for Goat Research to conduct collaborative research with the People's Republic of China Beijing Agricultural University's Sheep and Goat Department. Assistance will be provided only to Langston University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, a research associate, and travel.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1991 to support this work. It is anticipated that a total of $60,000 will be provided for this effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58-319R-1-024 may be obtained from: USDA/OICD/Admin Services, 0324 South Bldg, Washington DC 20250-4300.

Dated: July 1, 1991.

Nancy J. Croft,

*Contracting Officer.*

[FR Doc. 91-16084 Filed 7-5-91; 8:45 am]

BILLING CODE 3410-DP-M

## Soil Conservation Service

### Ohio County Board of Education Critical Area Treatment RC&D Measure Plan, WV

**AGENCY:** U.S. Department of Agriculture, Soil Conservation Service.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ohio County Board of Education Critical Area Treatment RC&D Measure Plan, Ohio County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291-4151.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

#### Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regarding, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 8 tons per acre per year. Conservation practices include a diversion, land smoothing, seeding, and mulching.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservation.

No administrative action on implementation of the proposal will be taken until, August 7, 1991.

"This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials."

Dated: June 27, 1991.

Rollin N. Swank,

*State Conservationist.*

[FR Doc. 91-16108 Filed 7-5-91; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Tag-Recapture Card.

*Form Number:* No form numbers assigned.

*Type of Request:* New collection.

*Burden:* 780 respondents; 63 reporting hours; average hours per response—.08 hours.

*Needs and Uses:* Data are needed to determine growth rates and migratory patterns of billfish and other recreational and commercially valued species. Persons that recover tags cooperate with the program by returning the tag along with biological data that is asked for on the report card. Resulting analyses are used to develop fishery management plans.

*Affected Public:* Individuals or households, businesses or other for-profit, small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the

proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 1991.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 91-16152 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-CW-M

## Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Logbooks—Southeast Region Family of Forms.

*Form Number:* NOAA Forms 88-186, 88-191, 61-54, and 88-192; OMB—0648-0016.

*Type of Request:* Request for revision of a currently approved collection.

*Burden:* 2,107 respondents; 15,208 reporting hours; average hours per response—.16 hours.

*Needs and Uses:* Catch and effort data are needed for scientific analyses that support critical conservation and management decisions that are made by national and international fishery management agencies.

*Affected Public:* Business or other for-profit, small businesses or organizations.

*Frequency:* Occasional.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommedations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 1991.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 91-16153 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-CW-M

## Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Application for Authorized Chart Agent.

*Form Number:* NOAA Form 49-74; OMB-0648-0164.

*Type of Request:* Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

*Burden:* 600 respondents; 150 reporting hours; average hours per response-.25 hours.

*Needs and Uses:* The information on NOAA Form 49-74 is needed to determine if applicants are qualified to become chart agents, selling NOS products. Chart agents are usually small businesses who purchase charts from NOS at a discount and make them available for resale to the general public.

*Affected Public:* Small businesses or organizations.

*Frequency:* One-time.

*Respondent's Obligation:* Required of obtain or retain a benefit.

*OMB Desk Officer:* Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 1991.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 91-16154 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-CW-M

## Foreign-Trade Zones Board

**[Docket No. 25-91]**

## Foreign-Trade Zone 125—South Bend, IN, Request for Manufacturing Vehicle Concepts Recreational Vehicle Plant, Extension of Comment Period

The comment period for the above case, requesting authority to manufacture recreational vehicles and ambulances under zone procedures within FTZ 125, South Bend, Indiana, for Vehicle Concepts (56 FR 22395, 5/15/91), is extended to July 19, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 27, 1991.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 91-16155 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-05-M

## International Trade Administration

**[A-423-801, A-405-801, A-427-803]**

## Preliminary Negative Determinations of Critical Circumstances: Coated Groundwood Paper From Belgium, Finland and France

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**EFFECTIVE DATE:** July 8, 1991.

**FOR FURTHER INFORMATION CONTACT:** Steve Alley or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1766 or 377-8830, respectively.

### Preliminary Critical Circumstances Determinations

On May 28, 1991, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from Belgium, Finland, and France. The Department of Commerce (the Department) published its preliminary determinations of sales at less than fair value in these investigations on June 13, 1991 (56 FR 27231 (Belgium), 56 FR 27233 (Finland), and 56 FR 27237 (France)).

In accordance with 19 CFR 353.16(b)(2)(ii), since these allegations were filed later than 20 days before the scheduled date of the preliminary determination, we must issue our preliminary determination of critical circumstances not later than 30 days after the allegations were filed.

Section 733(e)(1) of the Act provides that the Department will preliminarily

determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For Belgium and Finland, we are relying on U.S. Department of Commerce IM-146 import statistics of the subject merchandise for purposes of these preliminary determinations. We will be requesting export statistics from respondents in these countries for use in our final determinations. For France, Feldmuehle Beghin, S.A. (Feldmuehle) submitted on June 10, 1991, shipment data necessary to determine whether critical circumstances exist. Pursuant to 19 CFR 353.16(g), we normally consider the period beginning on the date the proceeding begins (the date the petition is filed) and ending at least three months later. In this case, because the petition was filed at the end of the month, we are comparing, for all three countries, the export volume over the period beginning with the month after the filing of the petition (the comparison period) with the export volume over the period ending with the month in which the petition was filed (the base period).

Furthermore, as import data for Belgium and Finland is available for four months from the month after the petition was filed, we compared that four-month period to the four-month period including and immediately prior to the filing of the petition. Moreover, as complete import data for France is available for five months from the month after the petiton was filed, we compared that five-month period to the five-month period including and immediately prior to the filing of the petiton.

Our analysis of the imports of coated groundwood paper from Belgium, Finland and France shows that the volume of imports from the base period to the comparison period decreased. Under 19 CFR 353.16(f)(2), in general, unless imports of the subject merchandise examined have increased by at least 15 percent, we will not consider the imports massive. Consequently, we have found that there have not been massive imports of the subject merchandise since the filing of the petition. Therefore, we do not need to consider whether there is a history of dumping or whether importers of coated groundwood paper knew or should have known that it was being sold at less than fair value. Thus, we preliminarily determine that critical circumstances do not exist with respect to imports of coated groundwood paper from Belgium, Finland and France. We will make final determinations of critical circumstances when we make our final determinations in these investigations, by August 20, 1991.

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

*Public Comment*

Since these determinations are being made before the due date for public comment on our preliminary determinations of sales at less than fair value, we will accept written comments on these preliminary determinations of critical circumstances until July 26, 1991, the date the case briefs are due.

These determinations are published pursuant to section 733(f) of the Act.

Dated: June 27, 1991.

**Francis J. Sailer,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-16157 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-05-M

---

**[A-588-821]**

## Initiation of Antidumping Duty Investigation: Commercial Microwave Ovens, Assembled or Unassembled, From Japan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**EFFECTIVE DATE:** July 8, 1991.

**FOR FURTHER INFORMATION CONTACT:** Steven Lim, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

**Initiation**

*The Petition*

On June 10, 1991, Menumaster, Inc. filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing commercial microwave ovens, assembled or unassembled (commercial microwaves). In accordance with 19 CFR 353.12, the petitioner alleges that imports of commercial microwaves from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these are materially injuring, or threaten material injury to, domestic producers of commercial microwaves.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing commercial microwaves. If any interested party, as described in 19 CFR 353.2(k)(3), (4), (5), or (6) wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

*United States Price and Foreign Market Value*

The petitioner's estimate of United States Price (USP) is based on sales through three primary distribution channels: Direct sales; sales through commission agents; and sales through stocking distributors. To establish the respective USPs, petitioner compiled pricing quotations to dealers of commercial microwave ovens from published price lists and dealer communications. In addition, petitioner obtained copies of invoices and price lists for sales via commission representatives and stocking representatives.

For one Japan producer, petitioner calculated USP based on 1990 U.S. price lists. For a second Japanese producer, petitioner calculated USP based on calendar 1990 U.S. price lists derived from 1991 Canadian price lists, adjusted for the exchange rate. We are accepting petitioner's USPs based on 1990 prices to the U.S.; we have rejected petitioner's estimate of USP based on price charged in the Canadian market.

Petitioner calculated USP pursuant to exporter's sales price (ESP) methodology (19 CFR 353.41(c)). Adjustments were made, where appropriate, for ocean freight, insurance, prepaid freight, U.S. duties, customs handling and processing fees, sales commissions, discounts,

rebates, and direct and indirect selling expenses. Direct selling expenses included direct advertising expenses, warranty expenses, service support expenses, and inventory carrying costs. Indirect selling expenses included office and staff expenses and indirect advertising expenses. Petitioner was unable to determine the extent of applicable deductions for inland freight expenses incurred in the United States or Japan. Petitioner states that the calculated USPs may require further downward adjustment to reflect the Japanese producer's respective sales incentives.

Petitioner's estimate of Foreign Market Value (FMV) is based on January 1991 price data obtained through a market research study conducted in Japan. In calculating the FMV for the various models of commercial microwaves, petitioner relied on retail prices and, based on the channel of distribution, adjusted those prices for applicable retail discounts, dealer mark-ups, inland freight, incentives/commissions, and direct and indirect home market selling expenses. Direct selling expenses included expenses incurred by the producer and related sales subsidiaries. Indirect selling expenses consisted of advertising expenses.

The amount of home market indirect selling expenses deducted was subject to the ESP cap, which in this case is the total of U.S. commissions to the U.S. indirect selling expenses. Home market indirect selling expenses consisted of advertising expenses. Petitioner made adjustments to the calculated ex-factory USPs and FMVs to account for the three percent consumption tax in Japan. Based on a comparison of USP and a discounted FMV, petitioner has alleged dumping margins ranging from 31.9% to 130.3%.

Because certain adjustments to USP and FMV were not adequately substantiated, the Department has recalculated these prices. We did not accept petitioner's USP adjustments for inventory carrying costs, warranties, service support, and office and staff expenses, because petitioner did not make corresponding adjustments to the FMV. We recalculated the direct and indirect selling expenses adjustments to FMV because certain expenses (*e.g.*, advertising and incentives/commissions) appear to have been doubled-counted. We recalculated the consumption tax as three percent of the gross USP or FMV, less discounts. Petitioner made FMV comparisons for identical and non-identical models of commercial microwaves. Where non-identical comparisons were made, petitioner made a difference in merchandise adjustment to the home market sales price to account for the differences in the physical characteristics of the merchandise sold in the United States and Japan. These adjustments were not adequately substantiated, and we are therefore accepting only those fair value comparisons of identical merchandise. Based on a comparison of FMV to USP as estimated by the Department, the alleged margins range from 6.30% to 54.65%.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of commercial microwaves from Japan.

*Initiation of Investigation*

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on commercial microwave ovens from Japan and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of commercial microwaves from Japan are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

*Scope of Investigation*

The product covered by this investigation is all commercial microwave ovens, assembled or unassembled. Commercial microwaves are electronic cooking devices which heat food by application of very high-frequency energy (microwaves), used for commercial or other than domestic purposes, and having 1) a minimum output wattage of 700 watts (W), 2) an inner cavity and outer cabinet of stainless steel or other durable materials, and 3) heavy-duty magnetrons, transformers, electronics, and hardware. Imported commercial microwaves typically, but not necessarily, have affixed a label from one or more independent, certifying, and testing organizations (*e.g.*, Underwriter's Laboratories (UL) or the National Sanitation Foundation (NSF)) attesting explicitly to the intended and approved "commercial" use of the microwave oven. The subject merchandise includes complete commercial microwave kits, whether wholly or partially assembled.

Commercial microwaves are provided for in the Harmonized Tariff Schedule (HTS) subheading 8419.81.10, but may enter under HTS subheading 8516.50.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Petitioner also contends that commercial microwaves are typically used in full-service and fast-food restaurants, hotels, convenience stores, businesses, schools, health care facilities, and retail locations.

Petitioner's intent is to include all microwave ovens used for commercial purposes and to exclude ovens used in the home. Although petitioner has offered various criteria for making the distinction between commercial and non-commercial microwave ovens, we believe that these criteria may not clearly distinguish between commercial and non-commercial microwaves, and therefore may preclude effective administration of any antidumping order by the Customs Service. We have attempted to define the subject merchandise only for purposes of initiation. We invite comment on technical specifications that will enable the Department to more precisely define the subject merchandise and that will enable Customs officials to distinguish between commercial and non-commercial microwaves. Any comments concerning the scope of this investigation should be submitted to the Department no later than July 22, 1991.

*Preliminary Determination by ITC*

The ITC will determine by July 25, 1991, whether there is a reasonable indication that imports of commercial microwave ovens from Japan are materially injuring, or threaten material injury to, a regional U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before November 18, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 1, 1991.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-16156 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-507-502]

## In-Shell Pistachios From Iran; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on in-shell pistachios from Iran. Interested parties who object to this revocation must submit their comments in writing no later than July 31, 1991.

**EFFECTIVE DATE:** July 8, 1991.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 17, 1986, the Department of Commerce ("the Department") published an antidumping duty order on in-shell pistachios from Iran (51 FR 25922). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

### Opportunity to Object

No later than July 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by July 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by July 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: June 28, 1991.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 91-16158 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-588-041]

## Synthetic Methionine From Japan; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on synthetic methionine from Japan. Interested parties who object to this revocation must submit their comments in writing no later than July 31, 1991.

**EFFECTIVE DATE:** July 8, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 10, 1973, the Department of Treasury published an antidumping finding on synthetic methionine from Japan (38 FR 18382). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

### Opportunity to Object

No later than July 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by July 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by July 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: June 28, 1991.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 91-16159 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-DS-M

---

## 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 of Final Determination in an Administrative Review made by the Department of Commerce, International Trade Administration, Import Administration, respecting Iron Construction Castings from Canada, filed by LaPerle Foundry, Inc. and Mueller Canada, Inc., with the United States Section of the Binational Secretariat on June 20, 1991.

**SUMMARY:** On June 20, 1991, LaPerle Foundry, Inc. and Mueller Canada, Inc., filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Determination in an Administrative Review respecting Iron Construction Castings from Canada made by the International Trade Administration, Import Administration, Import Administration, file number A-122-503, and published in the **Federal Register** on May 21, 1991 (56 FR 23274).

The Binational Secretariat has assigned case number USA-91-1904-02 to this request.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230 (202) 377-5438.

**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 Atricle 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section 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 United States Section of the Binational Secretariat, pursuant to article 1904 of the agreement, on June 20, 1991, requesting panel review of the final 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 July 22, 1991);

(b) A Party, investigating authority or interested person that does not file a Complaint 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 August 5, 1991); 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: June 28, 1991.

James R. Holbein,

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 91-16077 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-GT-M

## National Oceanic and Atmospheric Administration

### Marine Mammals; Issuance of Permit; Lake Superior Zoo (P468)

On November 20, 1990, notice was published in the **Federal Register** (55 FR 48267) that an application had been filed by The Lake Superior Zoo, Lake Superior Zoological Gardens, 7210 Fremont Street, Duluth, MN 55807, to obtain three (3) captive born or beached/stranded harbor seals (*Phoca vitulina*) for public display purposes.

Notice is hereby given that on June 28, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361-1407), the National Marine Fisheries Service (NMFS) issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policies of the MMPA. The NMFS has determined that the Lake Superior Zoo offers an acceptable program for education or conservation purposes. The Zoo facilities are open to the public on a regularly scheduled basis and access is not limited or restricted other than by an admission fee.

The Permit and supporting documentation are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (tel: 301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 (508/281-9200); and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526-6150).

Dated: June 28, 1991.

Nancy Foster,

*Director, Office of Protected Resources.*

[FR Doc. 91-16044 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals; Application for Permit: International Whaling Coalition (P478)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217-222).

*1. Applicant:* Mr. David N. Wiley, Project Director, International Wildlife Coalition, 634 North Falmouth Highway, North Falmouth, MA 02556-0388.

*2. Type of Permit:* Scientific research under MMPA and Scientific purposes under ESA.

*3. Name and Number of Marine Mammals:*

400 humpback whales (*Megaptera novaeangliae*)
300 fin whales (*Balaenoptera physalus*)
300 long-finned pilot whales (*Globicephala melaena*)
75 northern right whales (*Eubalaena glacialis*)
50 minke whales (*Balaenoptera acutorostrata*)
30 sei whales (*B. borealis*)
15 blue whales (*B. musculus*)
10 killer whales (*Orcinus orca*)

*4. Type of Take:* The applicant requests a permit to take the above mentioned species by harassment during photo-identification studies. The project will contribute photos to various photo-id catalogues and information obtained will be used to improve current knowledge pertaining to these species, their recovery, habitat use and management.

*5. Location and duration of activity:* Photographs will be taken primarily in waters off the eastern seaboard of the United States (especially the southern Gulf of Maine during winter, the Great South Channel and Nantucket Shoals) throughout the year over a 5-year period. The proposed project will focus on seasons and areas which are not adequately covered by existing scientific programs.

Concurrent with the publication of this notice in the **Federal Register**, the

Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893-3141).

Dated: June 28, 1991.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 91-16045 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals; Permit Modification; Dr. Randall S. Wells (P319B); Modification No. 2 to Permit No. 655

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) Scientific Research Permit No. 655 issued to Dr. Randall S. Wells, Brookfield Zoo, Chicago Zoological Society, Brookfield, Illinois 60513 on December 20, 1988 (53 FR 53050) as modified on June 21, 1990 (55 FR 26734) is further modified as follows:

The following is added to section A:

3. Of the Atlantic bottlenose dolphins (*Tursiops truncatus*) authorized in A.1. up to six (6) of the animals in 1991 and 1993 and up to 12 in 1991 may have metabolic rates measured by administering stable forms of labelled water and measuring the dilution of the components of this water over time as described in the modification request. Females with calves less than six (6) months old and calves less than six (6) months old shall be excluded.

This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification request are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, (301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141).

Dated: June 28, 1991.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 91-16046 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 1, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** July 9, 1991.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

**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).

The current limits for certain categories are being increased to account for unused carryforward.

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 55 FR 50756, published on December 10, 1990). Also see 55 FR 48268, published on November 20, 1990.

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 bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 1, 1991.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on July 9, 1991, you are directed to amend further the directive dated November 14, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels not subject to a group | |
| 200 | 562,876 kilograms. |
| 338/339 | 2,190,827 dozen of which not more than 1,614,872 dozen shall be in Categories 338-S/339-S [2]. |
| 638/639 | 2,186,179 dozen. |
| 659-H [3] | 2,327,192 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

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,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91–16076 Filed 7–5–91; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing the blind or other severely handicapped.

**EFFECTIVE DATE:** August 7, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On March 15, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 11206) of proposed additions to the Procurement List.

Comments were received from the current contractor for the portion of the Postal Service requirements for this tray and lid which is not proposed for addition to the Procurement List. That contractor noted that a large part of its business is making this tray and lid and another tray for the Postal Service. The contractor objected to the proposed addition because it would diminish the Government market for the tray and lid and force the contractor to compete for the portion of the Postal Service requirements it now produces with the contractor displaced by the addition to the Procurement List.

The commenting contractor stated that its sales and ability to offer employment and subcontracting opportunities in a labor surplus area would be severely affected if it lost some of its current Postal Service business. The contractor enclosed letters from the mayor and chamber of commerce of its community supporting this statement. The contractor also asserted that such a loss would impair its production efficiencies, risking loss of business it has attracted from other sources. In addition, the contractor said it would lose some of the use of its substantial capital investment in production machinery. It claimed that the loss would not be substantially offset by the opportunity to supply raw materials to the nonprofit agency employing persons with severe disabilities which would produce the tray and lid after addition to the Procurement List. It also noted that the Postal Service has declined to renew contracts for the other tray, thereby further reducing the amount of business available.

The contractor will not be directly affected by the addition to the Procurement List as it is not the contractor for this portion of the Postal Service requirements for the tray and lid. The Committee was aware of the contractor's role in furnishing the tray and lid to the Postal Service and structured the proposed addition to minimize its effects on the contractor while still accomplishing the Committee's mission of creating employment for persons with severe disabilities.

Furthermore, the contractor's objections are based on the assumption that it will have the same proportional share of the Postal Service market for the tray and lid after the addition as before it. However, the contractor indicated that its ability to produce these items successfully so impressed the Postal Service that the Service encouraged the contractor to make a substantial investment in production machinery to become a major supplier of the trays and lids. The contractor's current efficient and coordinated manufacturing process and its record of successful production of the trays and lids should give it a considerable advantage in competing for the remaining Postal Service business. Under the competitive system, however, no contractor is guaranteed a permanent share of Government business.

The Postal Service has told the Committee informally that it did not renew its contracts for the other tray because it has an adequate supply to meet its requirements. The Postal Service has not, to the Committee's knowledge, decided to end its procurement of that tray permanently. The Committee does not consider this temporary loss of business to be a factor for consideration in gauging the effect of the proposed addition to the Procurement List on the contractor.

The losses in employment and subcontracting opportunities predicted by the contractor would occur only if the contractor actually lost part of its current share of the market for the Postal Service tray and lid proposed for addition to the Procurement List. The Committee has concluded that this possible loss of employment is outweighed by the employment which will be created for persons with severe disabilities, a group which has an extremely high unemployment rate.

The claimed loss in production efficiencies and use of capital investment would also occur only if the contractor actually lost some of its current tray and lid business, which will remain available for competitive procurement. The Committee considers these claimed losses to be as remote as those noted in the above paragraph. However, it has attempted to mitigate the possible effects of its action by assuring that the contractor will be permitted to compete as a raw material supplier to the nonprofit agency that will produce the tray and lid.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Flat Trays and Lids,
P.S. Item No. 1257–T
(Requirements for NE, S & W Regions only),
P.S. Item No. 1257,
(Requirements for NE Regions only).

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 91-16174 Filed 7-5-91; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List Additions and Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to and Deletions from Procurement List.

**SUMMARY:** This action adds to and deletes from the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** August 7, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On November 16, 1990, February 8, April 5 and May 17, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 47905, 56 FR 5197, 14090 and 22848) of proposed additions to and deletions from the Procurement List:

### Additions

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

According, the following commodity and services are hereby added to the Procurement List:

### Commodity

Cover, Canteen, 8465-01-118-8175.

### Services

Commissary Shelf Stocking and Custodial, Fort Sill, Oklahoma

Commissary Shelf Stocking and Custodial, Fort Hood, Texas

Janitorial/Custodial, Naval Air Station, ARCOM Buildings 176 & 177, Willow Grove, Pennsylvania

Relooping of Linked Tube Carriers, Savanna Army Depot Activity, Savanna, Illinois

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

### Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodities and service are hereby deleted from the Procurement List:

Bag, Urine Collection, 6530-00-057-0953

Urinary Drainage Set, 6530-01-056-3659

Robe, Dressing, Men's, 6532-01-215-7963, 6532-01-215-7964

Robe, Dressing, Women's, 6532-01-215-7965, 6532-01-215-7966

Skirt, Woman's 8410-01-187-1420 and 8410-01-187-1441

*Service*

Janitorial/Custodial, Alamo Exchange Region, Army and Air Force Exchange, 5315 Summit Parkway, San Antonio, Texas

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 91-16175 Filed 7-5-91; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to and deletions from procurement list.

**SUMMARY:** The Committee has received proposals to add to and delete from the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 7, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodities and services to the Procurement List:

### Commodities

Clamp Fastener, 5820-00-930-3435

Chest, Lighting Equipment, 6210-00-382-9173

Cushion, Chair, Stenographer's, 7210-00-205-1173, 7210-00-205-1175, 7210-00-205-3544, 7210-00-205-3545

Badge, Qualification, 8455-01-113-0061

### Military Resale Item No. and Name

516 Gloves, Latex, Small, 517 Gloves, Latex, Medium, 518 Gloves, Latex, Large

### Services

Commissionary Shelf Stocking and Custodial, Charles Melvin Price Support Center Commissary, Granite City, Ilinois

Food Service Attendant, Naval Education and Training Center, Newport, Rhode Island

Janitorial/Custodial, Museum Complex, Hill Air Force Base, Utah

Janitorial/Custodial, Air Traffic Control Tower, Tacoma Industrial Airport, 1210 26th Avenue, NW., Gig Harbor, Washington

Janitorial/Grounds Maintenance, Shasta Dam Service Areas, Redding, California

Operation of the Base Information Transfer Center, Elgin Air Force Base,

Florida, Switchboard Operation, Elgin Air Force Base, Florida

**Deletions**

It is proposed to delete the following commodities from the Procurement List:

Paper, Teletypewriter Roll, 7530-00-223-7969, 7530-00-286-5030, 7530-00-721-9691

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 91-16176 Filed 7-5-91; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Base Closure and Realignment Commission

**ACTION:** The Defense Base Closure and Realignment Commission Establishes Freedom of Information Act (FOIA) Program.

**SUMMARY:** In accordance with title 5, U.S. Code section 552 (Freedom of Information Act), the Federal Advisory Committee Act and Public Law 101-510—Nov. 5, 1990—"Defense Base Closure and Realignment Act of 1990," the Defense Base Closure and Realignment Commission (hereafter referred as "Commission") has established its own FOIA program. Under this program, the pubic may request information and records concerning the Commission by writing to the following address: Defense Base Closure and Realignment Commission, 1625 K Street NW., Suite 400, ATTN: FOIA OFFICER, Washington, D.C. 20006-1604.

The Commission also advises that it continues to maintain a public reading room wherein Commission information is available for inspection and copying. The public reading room is located at the address stated above and is open during normal business hours, 9 a.m.-5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION:** Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 28, 1991.

**L.M. Bynum,**

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

[FR Doc. 91-15916 Filed 7-3-91; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Navy

### Record of Decision To Redevelop the Navy Broadway Complex, San Diego, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500-1508), the Department of the Navy announces its decision to redevelop the Navy Broadway Complex with up to 3.25 million square feet of Navy and commercial office space, hotel, retail, museum, and above grade parking uses through a public/private venture. The project will provide a 1.9 acre open space at the foot of Broadway for community use and will extend E, F and G streets from Pacific Highway to the waterfront. The design of the project will require that taller buildings be located in the northeastern portion of the site closest to downtown San Diego, with shorter structures stepping down toward the waterfront to the west and south. The tallest building would be up to 400 feet in height with other buildings ranging from 100 to 350 feet.

This action was identified as Alternative A in the Draft Environmental Impact Statement (DEIS), for which the Notice of Availability was published by the Environmental Protection Agency (EPA) in the **Federal Register** on 4 April 1990. Notice of Availability of the Final Environmental Impact Statement (FEIS) was similarly published in the **Federal Register** on 16 November 1990.

The Navy has a need to consolidate the regional administrative activities of the San Diego Navy shore establishment in modern, efficient facilities. The Navy Broadway Complex was identified as the site of this collocation program because of its central location, appropriate size, adjacency to the Navy pier, proximity to major regional transportation facilities, and land constraints on operational bases.

Construction of Navy offices is typically funded through the Military Construction (MILCON) appropriation. However, in view of current and projected budget deficits, Congress has acknowledged that direct funding is not available for this project by authorizing its implementation through a public/private venture. This legislation (Pub. L. 99-691) and related Office of Management and Budget guidelines allow the Navy to enter into long term leases of portions of the Navy Broadway Complex, and as consideration, receive office space at no cost.

The legislation requires that the lessee/developer be selected through a competitive process, and that the leased property be developed in accordance with plans and development terms formulated through the San Diego Association of Government's Broadway Complex Coordinating Group (BCCG). Pursuant to a Memorandum of Understanding dated 1 June 1987, the Navy and the City of San Diego will negotiate an agreement covering the implementation of the Broadway Complex development plan and the City's participation in public improvements related to the project. A companion Environmental Impact Report for the redevelopment was prepared by the City in conformance with the California Environmental Quality Act. It will be submitted to the City Council for certification in conjunction with the City's action on the development agreement.

The BCCG approved the Central Bayfront Design Principles on 29 September 1989, and these principles have been incorporated into the Development Plan and Urban Design Guidelines for the Broadway redevelopment project. In turn, the plan and guidelines were incorporated into the coastal consistency determination filed with the California Coastal Commission in August 1990. The Commission concurred with the Navy's determination that the project is consistent to the maximum extent practicable with the state coastal zone management program at its meeting on 7 May 1991.

Alternatives to the redevelopment of the Navy Broadway Complex were formulated through this extensive planning process. The process balanced the expressed community objectives for redevelopment, including a significant open space, access and view corridors through the site, compatible scale and provision of a museum, with the Navy's objective to obtain office space for its collection at no cost. The EIS analyzed six action alternatives: Alternative A with 3.25 million square feet of mixed-use building area and creation of a 1.9 acre open space; Alternative B with 3.5 million square feet of mixed-use building area and a 0.5 acre plaza; Alternative C emphasizing rehabilitation of existing buildings and providing no open space; Alternative D with 3.99 million square feet of mixed-use building area and a 0.5 acre plaza, but which would require acquisition of a second site for most of the Navy office spaces; Alternative E with 1 million square feet of Navy office space using traditional congressional funding (MILCON); and Alternative F with 3.32 million square feet of mixed-use building area, taller (up to 500 feet)

towers and a larger (3.5 acre) open space.

Alternatives A, B and D are environmentally superior alternatives. Each of these alternatives has substantial public benefits to four environmental resources: Planning consistency, waterfront access, recreational facilities, and socioeconomics. Alternative A has a substantially larger open space area at the foot of Broadway than Alternatives B and D, and is more compatible with the existing and planned scale of development than alternative F. Alternatives E does not meet either the community or Navy objectives for the project. Therefore, Alternative A is the environmentally preferred alternative that meets both the Navy and community objectives.

Environmental issues were identified through an early consultation process, which included the 18 October 1988 circulation of a Notice Of Intent to public agencies and interested individuals, and two public scoping meetings on 4 November 1988. The DEIS was circulated for public comment on 13 April 1990 and a public hearing was held on 16 May 1990. Comments on the DEIS and responses thereto were included in the FEIS which addressed the full range of issues including traffic and circulation, land use and applicable plans, aesthetics and viewsheds, air quality, geology and seismicity, biological and cultural resources, and public health and safety.

Beneficial impacts will occur through the improvement of physical and visual waterfront access, provision of active pedestrian areas, and improved aesthetics. Direct impacts to traffic and circulation will be reduced by improvements to intersections at Pacific/Grape, Broadway/Harbor, Broadway/Pacific, and Broadway/Front and to Pacific Highway south of Broadway, and First Avenue south of Ash. A travel demand management program will also be implemented by the tenants of the project to reduce the number of vehicular trips, reducing associated traffic impacts and parking needs, and air pollutant emissions.

The San Diego Air Basin is a non-attainment area for ozone, nitrogen dioxide, and carbon monoxide. The regional air quality management plan strategy establishes a goal of maintaining intersection traffic flows at Level Of Service (LOS) C, or better, to reduce idling times and vehicular emissions at intersections. Cumulative development in the project vicinity, downtown San Diego, would create congestion (LOS D) at six intersections which would not meet this goal. The project would contribute substantially to this congestion at one of the six intersections, and therefore, to cumulative regional air quality impacts. The project will, however, include travel demand management (TDM) measures that will substantially reduce vehicle trips and the resultant air quality impact.

Incorporation of the TDM measures will, according to the California Air Resources Board, demonstrate consistency with the State Implementation Plan, which details measures to achieve the National Ambient Air Quality Standards.

The mitigation monitoring program for the Navy Broadway Complex project includes a formalized implementation and reporting system with outside verification and enforcement by the City of San Diego. This program will be in place through all phases of the project, including design, construction and operation. A copy of the mitigation monitoring program may be obtained at the address set forth below.

The project is consistent with local plans for the Central Bayfront and Centre City San Diego. The Navy believes that there are no outstanding environmental issues to be resolved with respect to this project.

Questions regarding this action may be directed to William M. Robinson, Jr., Executive Director, Navy Broadway Complex Project, 555 W. Beech Suite 101, San Diego, California 92101-2937. Telephone (619) 532-3291.

Dated: June 28, 1991.

**Wayne Baucino,**

*LT, JAGC, USNR, Federal Register Liaison Officer.*

[FR Doc. 91-16051 Filed 7-5-91; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

**[Docket Nos. PP-49, PP-68, PP-68EA, PP-79, PP-79SC, and E-7545]**

### Southern California Edison Co. et al.; Presidential Permits and Electricity Export Authorizations Transfer

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Withdrawal of applications.

**SUMMARY:** Southern California Edison Company and San Diego Gas & Electric Company have withdrawn their joint request of November 8, 1990, to transfer Presidential permits and electricity export authorizations.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202-586-9624 or Lise Howe (Program Attorney) 202-586-2900.

**SUPPLEMENTARY INFORMATION:** The construction, connection, operation, and maintenance of facilities at the international border for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038 as amended. Exports of electricity from the United States to a foreign country also are regulated and require authorization under section 202(e) of the Federal Power Act. Presidential permits and export authorizations issued pursuant to these authorities may not be transferred or assigned.

On November 8, 1990, Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) jointly filed applications with the Department of Energy to permit Edison to assume Presidential permits and electricity export authorizations previously issued to SDG&E under Docket numbers PP-49, PP-68, PP-68EA, PP-79, PP-79SC, and E-7545. Edison and SDG&E filed the applications as a result of their application before the Federal Energy Regulatory Commission (FERC) and the California Public Utility Commission (CPUC) for permission to merge SDG&E with and into Edison. Edison and SDG&E were required to file the DOE applications to permit Edison to assume the Presidential permits and electricity export authorizations since they may not be transferred or assigned. Notice in the **Federal Register** on January 9, 1991, (56 FR 848) announced commencement of the proceeding.

On June 5, 1991, Edison and SDG&E jointly filed with DOE notices of withdrawal of all pending proceedings under the above dockets based on the CPUC's denial of the merger request and the subsequent decision by Edison and SDG&E to abandon the proposed merger. Because Edison and SDG&E have decided not to merge, the request that Edison be permitted to assume the Presidential permits and export authorizations previously issued to SDG&E is now moot.

For the above reasons the Office of Fuels Programs is terminating the proceedings in the above dockets.

Issued in Washington, DC on June 28, 1991.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.*

[FR Doc. 91-16138 Filed 7-5-91; 8:45 am]

BILLING CODE 6450-01-M

## Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety (ACNFS)

Date and Time: Monday, July 29, 1991, 8 a.m. to 6 p.m. and 8 p.m. to 10 p.m.

Place: Denver Marriott West, 1717 Cole Boulevard, Golden, Colorado 80401, Golden Ball Room.

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC–21, 1000 Independence Ave., SW., Washington, DC 20585, 202/586–1770.

### Purpose of the Committee

The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

### Tentative Agenda

*Monday, July 29, 1991*

8 a.m. Chairman John F. Ahearne Opens Meeting Rocky Flats Plant Issues
Noon Lunch
1 p.m. Rocky Flats Plant Issues, Selected Technical Issues, Subcommittee Reports, Committee Business
6 p.m. Meeting Adjourned until 8 p.m.
8 p.m. Chairman John F. Ahearne Opens Public Comment Session
10 p.m. Meeting Adjourned

### Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

### Transcripts

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 2, 1991.

**Edwin F. Inge,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 91–16139 Filed 7–5–91; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ES91–37–000, et al.]**

## Orange and Rockland Utilities, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

### 1. Orange and Rockland Utilities, Inc.

[Docket No. ES91–37–000]

June 26, 1991.

Take notice that on June 21, 1991, Orange and Rockland Utilities, Inc., filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $100 million of short-term unsecured obligations on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

*Comment date:* July 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 2. Madison Gas and Electric Company

[Docket No. ER90–535–001]

June 27, 1991.

Take notice that on June 19, 1991, Madison Gas and Electric Company (Madison) tendered for filing its Compliance Refund Report in compliance with the Commission's letter order dated April 23, 1991.

*Comment date:* July 11, 1991 in accordance with Standard Paragraph E at the end of this notice.

### 3. Orange and Rockland Utilities Company

[Docket No. ER91–358–000]

June 26, 1991.

Take notice that on June 7, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing an amendment to Orange and Rockland's previous filing of March 27, 1991, pursuant to Docket No. ER91–358–000, of an executed Service Agreement between Orange and Rockland and Delaware Valley Cement Block Co., Inc.

*Comment date:* July 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 4. Commonwealth Edison Company

[Docket No. ER91–495–000]

June 26, 1991.

Take notice that on June 19, 1991, Commonwealth Edison Company (Edison) tendered for filing a Fifth Amendment, dated April 1, 1991, to the Interconnection Agreement, dated June 21, 1967, between Edison and Iowa-Illinois Gas and Electric Company (Iowa). The Fifth Amendment changes various rates for coordination transactions between the parties and incorporates in the Interconnection Agreement new rate schedules for Term Energy and Firm Power.

Edison and Iowa request expedited consideration of the filing and an effective date for each rate schedule to be July 1, 1991. Accordingly, Edison and Iowa request waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon Iowa, the Illinois Commerce Commission, and the Iowa State Utility Board.

*Comment date:* July 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

### 5. Ogden Projects, Inc.

[Docket No. ER91–484–000]

June 26, 1991.

Take notice that on June 12, 1991, Ogden Projects, Inc. (Ogden) tendered for filing a Request for Waiver and a Notice of Succession stating that effective June 12, 1991, Ogden would adopt and make its own all applicable rate schedules, and supplements thereto filed with the Federal Energy Regulatory Commission by Hennepin Energy Resource Co., Limited Partnership.

*Comment date:* July 10, 1991, in accordance with Standard Paragraph E 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 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. 91–16060 Filed 7–5–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91-2300-000, et al.]

## Northern Natural Gas Co., et al.; Natural Gas Certificate Filings

June 28, 1991.

Take notice that the following filings have been made with the Commission:

### 1. Northern Natural Gas Company

[Docket No. CP91-2300-000]

Take notice that on June 18, 1991, Northern Natural Gas Company (Northern) P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-2300-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon twenty-two individually certificated in-field exchange agreements involving fourteen other companies and authority to abandon certificate authorization issued to thirteen of these other companies,[1] all as more fully set forth in the application which is one file with the Commission and open to public inspection.

Northern contends that with the issuance of Order Nos. 436, 451, 490, and 500, producers gained the opportunity and flexibility to sell their gas to parties other than pipelines. Many producers took advantage of the provisions of these orders and redirected the sale of their volumes from the pipeline, thereby reducing the gas volumes available for pipelines to satisfy exchange transactions. Similarly, buyout and buydowns of supply contracts by pipelines eliminated volumes previously utilized in satisfying the requirements of exchange agreements. The exchanges became an administrative burden as pipelines tried to balance such exchanges where significant quantities of gas were permanently released and other gas was dedicated one month and not the next as a result of temporary release arrangements. See the attached appendix for a schedule of services to be abandoned, which includes the name of the company or companies to be abandoned, the contract number, expiration date of the abandonment, Northern's rate schedule, and the docket number authorizing the service for both Northern and the third party involved in the service.

Northern alleges that the exchanges no longer provide comparable service and have become unbalanced in favor of one party or the other. The benefits to the parties under these exchanges no longer exist. Northern currently has certificated infield exchange arrangements with other interstate pipelines which are no longer needed by either party and can be replaced if necessary by self-implementing transportation agreements. Northern believes that the individually certificated infield exchange agreements for which abandonment is requested herein do not provide either Northern or the other parties the flexibility which is required in today's natural gas environment.

*Comment date:* July 19, 1991, in accordance with Standard Paragraph F at the end of this notice.

[1] No certificate was issued to Pioneer Natural Gas Company (Pioneer) for its participation in the exchange arrangements under Northern's Rate Schedule X-45; therefore, no abandonment is required on behalf of Pioneer.

NORTHERN NATURAL GAS COMPANY SCHEDULE OF SERVICES TO BE ABANDONED

| Company | Contract No. | Northern expiration date | Certificated volume 2 tariff rate schedule | In northern docket No. | Third party docket No. |
|---|---|---|---|---|---|
| ANR/Michigan Wisconsin | 50459 | Evergreen | X-92 | CP81-410 | CP81-410 |
| Cabot/Maple | 20487 | Evergreen | X-63 | CP77-192 | G-5715 |
| Colorado Interstate Gas Co | 8366 | Evergreen | X-67 | CP78-199 | CP78-199 |
| Columbia Gas Transmission/Columbia Gulf Transmission | 42295 | Evergreen | X-105 | CP80-204 | CP80-204 |
| El Paso Natural Gas | 11294 | Evergreen | X-68 | CP78-481 | CP78-457 |
| | 12293 | Evergreen | T-3 | CP67-79 | |
| | 18342 | 03/12/95 | X-21 | CP65-389 | CP65-384- |
| K-N Energy Inc | 29838 | Evergreen | X-39 | CP74-74 | CP74-164 |
| | 41882 | Evergreen | X-108 | CP84-182 | CP83-500 |
| Maxus Energy Corp./Diamond Shamrock | 26834 | Evergreen | X-29 | CP72-51 | CI71-293 |
| Natural Gas Pipeline | 30105 | Evergreen | X-38 | CP74-145 | CP74-134 |
| | 31201 | Evergreen | X-56 | CP76-12 | CP76-273 |
| Panhandle Eastern Pipeline Co | 9119 | Evergreen | X-55 | CP76-247 | CP76-247 |
| | 9212 | Evergreen | X-54 | CP76-247 | CP76-247 |
| | 39696 | Evergreen | X-72 | CP79-138 | CP79-138 |
| Phillips Petroleum Co | 21256 | Evergreen | X-106 | CP68-75 | CI68-816 |
| | 21892 | Line Sold | X-18 | CP68-75 | CI68-816 |
| Pioneer Natural | 32625 | 09/30/84 | X-45 | CP75-94 | |
| Transcontinental Gas Pipe Line | 38976 | Evergreen | X-71 | CP78-482 | CP78-463 |
| | 43892 | Evergreen | X-87 | CP81-75 | CP81-75 |
| Southern Natural Gas Company | 46178 | 7 Years | X-107 | CP83-497 | CP83-497 |
| West Texas Gathering Co | 10049 | 04/01/78 | X-14 | CP67-225 | CP67-120 |

### 2. Questar Pipeline Company

[Docket No. CP91-2330-000]

Take notice that on June 24, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP91-2330-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon its Jurisdictional Lateral (J.L.) No. 38 under the blanket authorization issued by the Commission in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to abandon its 2.95-mile, 10-inch diameter J.L. No. 38, located in the Birch Creek Field of Sublette County, Wyoming, which connects the Birch Creek Field with Northwest Pipeline Corporation's (Northwest) 30-inch Big Piney gathering lateral. Upon abandonment, J.L. No. 38 will be sold to Northwest who will

continue to provide gathering service to Mountain Fuel Supply Company (MFS), Questar's local distribution company affiliate, and Chevron U.S.A. Inc. (Chevron), a southwestern Wyoming area natural gas producer, the only customers served through J.L. No. 38. Questar states that abandonment and sale of J. L. No. 38 to Northwest will promote efficient field operations without impairing the quality of service provided to MFS and Chevron. In addition, Questar states that MFS and Chevron will benefit from reduced costs and, consequently, both companies support Questar's proposed abandonment.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

**3. Florida Gas Transmission Company, Williston Basin Interstate Pipeline Company, Texas Gas Transmission Corporation**

[Docket Nos. CP91-2342-000, CP91-2343-000, CP91-2344-000, CP91-2345-000, CP91-2346-000, CP91-2347-000]

Take notice that on June 26, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket number of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day annual MMBtu | Receipt [1] points | Delivery points | Contract date rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2342-000 (6-26-91) | Georgia Pacific Corporation. | 4,932<br>3,699<br>1,800,000 | OLA, OTX, TX, LA, MS, AL, FL. | FL | 6-1-91, PTS-1, Interruptible. | ST91-9077-000 6-1-91 |
| CP91-2343-000 (6-26-91) | Western Gas Processors, Ltd. (producer). | 3,500<br>3,500<br>[2] 1,277,000 | ND, WY, MT | ND, WY, MT | 5-16-91, IT-1, Interruptible. | ST91-9039-000 6-1-91 |
| CP91-2344-000 (6-26-91) | Western Gas Processors, Ltd. (producer. | 6,800<br>6,800<br>[2] 2,482,000 | ND, WY, MT | ND, WY, MT | 5-16-91, IT-1, Interruptible. | ST91-9019-000 5-16-91 |
| CP91-2345-000 (6-26-91) | Transco Energy marketing Company. | 50,000<br>10,000<br>3,650,000 | Various | LA | 5-24-91, IT, Interruptible. | ST91-9022-000 6-1-91 |
| CP91-2346-000 (6-26-91) | Stellar Gas Company | 35,000<br>20,000<br>7,300,000 | OLA | OLA | 1-18-91, IT, Interruptible. | ST91-9021-000 6-1-91 |
| CP91-2347-000 (6-26-91) | Phibro Energy Inc | 250,000<br>100,000<br>36,500,000 | Various | LA | 5-23-91, IT, Interruptible. | ST91-9023-000 5-24-91 |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Williston Basin's quantities are in dekatherms.

| Applicant's address | Blanket docket |
|---|---|
| Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 | CP89-555-000 |
| Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301 | CP88-686-000 |
| Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 | CP89-1118-000 |

**4. Tennessee Gas Pipeline Company**

[Docket No. CP91-2324-000]

Take notice that on June 21, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP91-2324-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add an existing sales tap to its FERC Rate Schedule IT under the blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes to add a currently nonjurisdictional sales tap facility built pursuant to section 311 of the natural Gas Policy Act of 1978 (NGPA) for jurisdictional service under its FERC Rate Schedule IT. Tennessee proposes to add the Gerald Andrus plant sales tap, Washington County, Mississippi, to provide an interruptible transportation service to Mississippi Power & Light Company (MP&L), and end-user, pursuant to Tennessee's blanket certificate authority granted in Docket No. CP87-115-000. Tennessee also states that MP&L previously reimbursed Tennessee for the $130,272 in construction costs for the Gerald Andrus plant sales tap.

Tennessee also requests a waiver of the first-come, first-served provisions of its open-access tariff in order for MP&L to retain the scheduling priority that

existed under the transportation agreements previously authorized under section 311 of the NGPA. Tennessee would transport up to 260,000 dekatherms of natural gas per day for MP&L under Rate Schedule IT. Tennessee would transport gas for MP&L from receipt points in Alabama, Louisiana, Offshore Louisiana, Mississippi, New York, and Texas, to the Washington County, Mississippi, sales tap.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

**5. Southern Natural Gas Company**

[Docket No. CP91-2348-000]

Take notice that on June 26, 1991, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed a request in Docket No. CP91-2348-000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Excel Gas Marketing, Inc. (Excel), under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Southern proposes to implement a service agreement with Excel dated May 2, 1991, providing for a maximum transportation volume of 100,000 million Btu per day. It is indicated that Southern would receive the gas at specified points located in onshore and offshore Texas and Louisiana, Alabama, Mississippi and Georgia and would redeliver the gas at a specified point located in onshore Louisiana. Southern estimates peak day, average day and annual volumes of 100,000 million Btu, 11,000 million Btu, and 4,015,000 million Btu, respectively. It is stated that Southern initiated a 120-day transportation service for Excel on May 3, 1991, as reported in Docket No. ST91-8801-000.

Southern states that no new facilities would be required to implement the service and that it would charge rates and abide by the terms and conditions of its Rate Schedule IT.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 385.214) 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 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-16061 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. CP91-2307-000, et al.;]**

## South Penn Gas Company, et al.; Natural Gas Certificate Filings

June 27, 1991.

Take notice that the following filings have been made with the Commission:

**South Penn Gas Company**

[Docket No. CP91-2307-000]

Take notice that on June 18, 1991, South Penn Gas Company, (South Penn), 55 S. Third Street, Oxford, Pennsylvania, 19363, filed in Docket No. CP91-2307-000, an application pursuant to section 7(f) of the natural Gas Act requesting that the Commission grant a service area determination for the South Penn-Emmitsburg District, all as more fully set forth in the application which is on file with the commission and open to public inspection.

South Penn-Emmitsburg District owns and operates local distribution facilities that extend from Adams County, Pennsylvania to Frederick County, Maryland and through which South Penn-Emmitsburg District provides natural gas distribution service to certain residential, commercial, and industrial customers located in Adams County, Pennsylvania and Frederick County, Maryland, subject to jurisdiction of the Pennsylvania Public Utility Commission and Maryland Public Service Commission, respectively. South Penn requests that the Commission make a determination that South Penn qualifies as a local distribution company in the area proposed. South Penn further requests that the Commission grant it a waiver of certain reporting and accounting requirements otherwise applicable to South Penn as a natural gas company.

*Comment date:* July 18, 1991, in accordance with Standard Paragraph F at the end of this notice.

**Williston Basin Interstate Pipeline Company**

[Docket Nos. CP91-2208-000, CP91-2209-000, CP91-2210-000, CP91-2211-000, CP91-2212-000, CP91-2213-000, CP91-2214-000, CP91-2215-000]

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas to additional delivery points, under its blanket authorization granted in Docket

No. CP89-1118-000 pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

Williston Basin proposes to transport natural gas to additional existing delivery points amended to various transportation agreements that it provides interruptible service under its blanket certificate issued in Docket No. CP89-1118-000 pursuant to section 7 of the NGA. Williston Basin states that it currently provides transportation service to its various customers under previously filed and approved prior notice requests. Williston Basin also states that it does not propose any volumetric changes for any of its customers in the above-referenced dockets. The applicable information for Williston Basin's requests is summarized in the appendix.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

APPENDIX

| Docket No. [1] (date filed) | Shipper | Delivery point location |
|---|---|---|
| CP91-2208-000 (6-19-91) | Amerada Hess Corporation | McGregor Interconnect, Burke County, ND; Field Fuel (Cherry Creek), McKenzie County, ND. |
| CP91-2209-000 (6-25-91) | Koch Hydrocarbon Corporation | MDU-Pete Lien & Sons, Pennington County SD; MDU-South Dakota Cement Plant, Pennington County, SD. |
| CP91-2210-000 (6-25-91) | North Canadian Resources, Inc. | MDU-Jamestown, Stutsman County, ND; MDU-Bismarck, Burleigh County, ND; MDU-Mandan, Burleigh County, ND; MDU-Cenex Refinery, Yellowstone County, MT; MDU-Fort Totten, Benson County, ND; MDU-Powell, Park County, WY; MDU-Minot, Ward County, ND; MDU-Langdon, Cavalier, ND; MDU-Williston, Williams County, ND; MDU-Valley City, Barnes County, ND; MDU-Washburn, McClean County, ND; MDU-Glasgow, Valley County, MT; MDU-Rapid City, Pennington County, SD; MDU-Dickinson, Stark County, ND; MDU-Miles City, Custer County, MT; MDU-New Rockford, Eddy County, ND; MDU-Carrington, Foster County, ND; MDU-Billings, Yellowstone County, MT; MDU-Medina, Stutsman County, ND; MDU-Sheyenne, Eddy County, ND; MDU-Park River, Walsh County, ND; MDU-Tioga, Williams County, ND; MDU-Riverdale, McClean County, ND; MDU-Grafton, Walsh County, ND; MDU-Ellsworth Air Force Base, Pennington County, SD; MDU-Minot Air Force Base, Ward County, ND; MDU-P.A.R., Pembina County, ND; MDU-Cenex Agrifuels, Pembina County, ND; MDU-Fort Meade, Meade County SD; MDU-Bismarck Rendering (Hebron), Morton County, ND; MDU-Heskett Master, Morton County, ND. |
| CP91-2211-000 (6-25-91) | Rainbow Gas Company | MDU-Devils Lake, Ramsy County, ND; MDU-K N Energy, Fremont County, WY; MDU-Cavalier, Pembina County, ND; MDU-Hills Material Company, Lawrence County, ND. |
| CP91-2212-000 (6-25-91) | Western Gas Processors, Ltd | MDU-Monad Border, Yellowstone County, MT; Northern Border-Glen Ullin, Morton County, ND; Western Gas Processors T.R. Plant, Billings County, ND. |
| CP91-2213-000 (6-25-91) | Prairielands Energy Marketing, Inc. | MDU-Monad Border, Yellowstone County, MT; MDU-Hills Material (Mainline), Lawrence County, SD; MDU-Shiloh Road Master Meter; Yellowstone County, MT. |
| CP91-2214-000 (6-19-91) | Exxon Corporation | K N Energy-Riverton, Fremont County, WY. |
| CP91-2215-000 (6-19-91) | Chevron, USA Inc | Chevron-Little Knife Plant, Billings County, ND. |

[1] Williston Basin supplemented its requests in Docket Nos. CP91-2209-000, CP91-2210-000, CP91-2211-000, CP91-2212-000, CP91-2213-000, CP91-2214-000, and CP91-2215-000 on June 21, 1991.

## Florida Gas Transmission Company

[Docket No. CP91-2311-000]

Take notice that on June 19, 1991, Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2311-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add the existing Martin North delivery point to an existing interruptible transportation service Florida Gas provides for Florida Power and Light Company (FPL), under Florida Gas' blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Florida Gas requests authorization to add the Martin North delivery point, located in Martin County, Florida, to an interruptible transportation service it provides for FPL pursuant to a transportation service agreement dated February 23, 1990. The transportation service is provided pursuant to the terms and conditions of Florida Gas' Rate Schedule ITS-1, it is stated.

Florida Gas states that it was authorized to provide the transportation service in Docket No. CP91-1324-000 and to construct the delivery point in Docket No. CP91-1687-000. Florida Gas asserts that by Commission order issued May 21, 1991, in Docket No. RP91-133-000 Florida Gas was granted a limited waiver to permit FPL to retain its existing place in Florida Gas' first-come, first-served interruptible service queue while adding the Martin North delivery point to the transportation agreement.

Florida Gas states that the total volumes of natural gas to be delivered to FPL would not exceed the presently authorized volumes. Florida Gas further states that the proposed delivery point is not prohibited by its tariff and that it has sufficient capacity to accomplish the service proposed without detriment or disadvantage to Florida Gas' other customers.

*Comment date:* August 12, 1991, in accordance with standard paragraph G at the end of this notice.

## CNG Transmission Corporation

[Docket No. CP91-2326-000]

Take notice that on June 21, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26303-2450, filed in Docket No. CP91-2326-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-311-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with

the Commission and open to public inspection.

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by CNG and is summarized in the attached appendix.

*Comment date:* August 12, 1991, in accordance with standard paragraph G at the end of this notice.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual dth | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2326-000 (6-21-91) | Brooklyn Interstate Natural Gas (marketer). | 50,000<br>230<br>83,950 | WV, PA, NY | NY | 4-1-91, TI, Interruptible | ST91-8920-000 5-9-91 |
| CP91-2326-000 (6-21-91) | Consolidated Fuel Corporation (marketer). | 10,000<br>918<br>335,070 | WV, PA, NY | PA | 5-3-91, TI, Interruptible | ST91-8921-000 5-4-91 |
| CP91-2326-000 (6-21-91) | Endevco Oil & Gas Company (marketer). | 1,000<br>36,135 | WV, PA, NY<br>99 | PA | 3-20-91, TI, Interruptible. | ST91-8919-000 5-4-91 |
| CP91-2326-000 (6-21-91) | Meridian Marketing & Transmission (marketer). | 1,200<br>385<br>140,525 | WV, PA, NY | NY | 3-28-91, TI, Interruptible. | ST91-8918-000 5-2-91 |

**Viking Gas Transmission Company**

[Docket No. CP91-2323-000]

Take notice that on June 21, 1991, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2323-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to designate an additonal delivery point for service to Wisconsin Gas Company (Wisconsin Gas) in Clark County, Wisconsin, under Viking's blanket certificate issued in Docket No. CP82-414-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the commission and open to public inspection.

Specifically, Viking proposes to add the delivery point, designated the Chili delivery point (Chili), to facilitate an existing sales service rendered by Viking for Wisconsin Gas. It is stated that the sale is being made pursuant to an agreement dated August 1, 1989, on file as Viking's Rate Schedule CR-2, and that the instant request is made by Viking in response to a request from Wisconsin Gas. It is asserted that Viking and Wisconsin Gas signed a letter agreement dated June 6, 1991, to amend the original sales agreement by adding a sixth delivery point to the five existing ones. It is explained that the maximum daily volumes delivered would be reassigned as follows:

| Delivery point | Existing volume dt/d | Proposed volume dt/d |
|---|---|---|
| Dresser | 337 | 403 |
| Boyceville | 312 | 604 |
| Colfax | 307 | 604 |
| Cadott | 3,525 | 1,762 |
| Greenwood | 1,964 | 2,568 |
| Chili | — | 504 |
| | 6,445 | 6,445 |

It is stated that the total quantities delivered to Wisconsin Gas would be within Wisconsin Gas' daily entitlement from Viking and that the changes are not prohibited by Viking's tariff. It is asserted that Viking has sufficient capacity to make the deliveries at Chili without detriment or disadvantage to its other customers. It is estimated that the cost of the proposed faiclities would be $74,000, for which Viking would be reimbursed by Wisconsin Gas.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Texas Gas Transmission Corporation**

[Docket Nos. CP91-2331-000, CP91-2332-000, CP91-2333-000]

Take notice that Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* August 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2331-000 (06-24-91) | Exxon Corporation (marketer). | 100,000<br>50,000<br>18,250,000 | various | various | 03-12-91, IT, Interruptible. | ST91-8980 05-31-91 |

| Docket No. (date filed) | Shipper name (type) | Peak day average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2332-000 (06-24-91) | Exxon Corporation (marketer). | 100,000 50,000 18,250,000 | various | various | 03-21-91, IT, Interruptible. | ST91-8982 05-31-91 |
| CP91-2333-000 (06-24-91) | Exxon Corporation (marketer). | 100,000 50,000 18,250,000 | various | various | 03-21-91, IT, Interruptible. | ST91-8981 05-31-91. |

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.214) 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 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-16062 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

## Designating New Docket Prefixes for Letters Issued by the Chief Accountant

June 28, 1991.

Take notice that the Federal Energy Regulatory Commission has adopted two new docket prefixes to be assigned to letters issued by the Chief Accountant.

The Office of Chief Accountant (OCA) receives letters from jurisdictional electric utilities, natural gas companies, and oil pipeline companies requesting certain accounting, reporting and preservation of records approvals under 18 CFR parts 101, 125, 141 (§§ 141.1 and 141.2), 201, 225, 260 (§§ 260.1 and 260.2), 352,[1] 356,[1] and § 357.2.[1] In addition, OCA responds to letters from jurisdictional companies, other federal agencies, state regulatory commissions, industry associations, the public and others requesting interpretations of the Commission's accounting, reporting and preservation of records regulations.

Usually, the Chief Accountant directly responds to these requests pursuant to the authority delegated by the Commission in 18 CFR 375.303. The Chief Accountant's responses constitute final agency actions and are subject to rehearing before the Commission. The following docket prefixes are assigned to the Chief Accountant's letters:

AC—Approvals by the Chief Accountant: Accounting under 18 CFR parts 101, 201, and 352; Reporting under 18 CFR 141.1, 141.2, 260.1, 260.2, and 357.2; and Records Retention under 18 CFR parts 125, 225, and 356; and

AI—Interpretations by the Chief Accountant: Accounting under 18 CFR parts 101, 201, and 352; Reporting under 18 CFR 141.1, 141.2, 260.1, 260.2, and 357.2; and Records Retention under 18 CFR parts 125, 225, and 356.

Each request described above will carry a docket number beginning with the two-letter prefix "AC" or "AI", as appropriate, followed by the last two digits of the fiscal year in which the proceedings are initiated, and a number assigned in numerical sequence beginning at "1" with the start of each fiscal year.

Further, applicants are required to file an original and seven copies of each request for an approval or interpretation by the Chief Accountant.

Should a request for rehearing of any matter decided by the Chief Accountant or the OPB be filed with the Commission, the matter will continue to carry the original assigned "AC" or "AI" docket number.

This notice is issued for the information and aid of jurisdictional companies, the public and practitioners before the Commission as an explanation of the docketing prefixes used by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-16059 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

[1] For oil pipeline requests, the Commission has delegated to the Oil Pipeline Board (OPB) the authority to act on these requests. The Chairman of the OPB has, in turn, subdelegated authority to the Chief Accountant to issue actions approved by the OPB.

**[Docket No. EL91-43-000]**

## Southern Minnesota Municipal Power Agency v. Northern States Power Company (Minnesota); Filing

June 27, 1991.

Take notice that on June 26, 1991, the Southern Minnesota Municipal Power Agency (SMMPA) filed a compliant,

petition for energy declaratory order, and motion for expedited summary disposition concerning certain contracts between SMMPA and Northern States Power Company (Minnesota) (NSP). SMMPA asserts that NSP has notified SMMPA that it has adopted a new interpretation of the agreements at issue and of the position of SMMPA in the litigation concerning these agreements and that this interpretation permits NSP to take unilateral action to alter longstanding practices and procedures for the scheduling of deliveries of generation from SMMPA's largest generating resource—a coal-fired plant owned jointly with NSP and located in the service territory of NSP—to many of SMMPA's members. SMMPA further asserts that NSP has notified it and other affected utilities that it intends to implement certain changes as of July 1, 1991 at midnight. SMMPA requests that the Commission declare expeditiously that NSP cannot lawfully take the actions that it is contemplating. SMMPA further requests that the Commission declare summarily that NSP cannot take the actions that SMMPA describes in its filing without complying with section 205(d) of the Federal Power Act and the applicable Commission regulations. SMMPA requests, because of the need for expedition, that the Commission require NSP to answer the complaint and petition in full no later than July 10, 1991 and in any event before NSP attempts to change unilaterally its scheduling procedures.

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, as well as answers to the motion for summary disposition and answers to the complaint, should be filed on or before July 12, 1991. 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. 91-16064 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TM91-3-8-000]**

## South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 28, 1991.

Take notice that South Georgia Natural Gas Company (South Georgia) on June 24, 1991, tendered for filing the following revised sheets to its FERC Gas Tariff:

**First Revised Volume No. 2**

Fourteenth Revised Sheet No. 76
Fourteenth Revised Sheet No. 106
Fifteenth Revised Sheet No. 76
Fifteenth Revised Sheet No. 106
Sixteenth Revised Sheet No. 76
Sixteenth Revised Sheet No. 106

South Georgia states that the proposed revised tariff sheets would flow through to South Georgia's two gas storage customers increased storage transportation charges billed to South Georgia by Southern Natural Gas Company (Southern).

South Georgia states that the Commission's August 22, 1980 order in the captioned proceeding permits South Georgia to flow through to its two storage customers any changes in the amounts which the Commission authorizes Southern to charge South Georgia for storage transportation services. South Georgia further states that the Commission recently accepted for filing to be effective December 1, 1990, January 1, 1991 and February 3, 1991, revised tariff sheets filed by Southern which increased Southern's storage transportation charges to South Georgia.

South Georgia requests waivers of § 154.51 of the Commission's Regulations and any other waivers necessary to make the revised tariff sheets effective as of December 1, 1990, January 1, 1991 and February 3, 1991, the dates of the increases in Southern's charges to South Georgia.

South Georgia states that copies of the filing were served on the two jurisdictional customers affected by the filing, interested state commissions and all parties in the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 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 July 8, 1991. 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. 91-16063 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. G-3720-001, et al.**

## Texaco Exploration and Production Inc. (Successor-in-Interest to Texaco Producing Inc.); Redesignation

June 28, 1991.

Take notice that on March 6, 1991, Texaco Exploration and Production Inc. of P.O. Box 4700, Houston, Texas 77210-4700, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates to continue sales being made under the certificates issued to Texaco Producing Inc. in the docket listed in the appendix and requesting that the related rate schedules listed in the appendix be redesignated as those of Texaco Exploration and Production, Inc., all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By Certificate of Amendment of Certificate of Incorporation dated December 21, 1990, and effective December 24, 1990, Texaco Producing Inc. changed its name to Texaco Exploration and Production Inc.

Notice is hereby given that the certificates and related rate schedules listed in the appendix hereto are redesignated to reflect the corporate name change from Texaco Producing Inc. to Texaco Exploration and Production Inc.

**Lois D. Cashell,**

*Secretary.*

APPENDIX

| Formerly: Texaco Producing Inc. Now: Texaco Exploration and Production Inc. FERC gas rate schedule No. | Certificate Docket No. | Purchaser |
|---|---|---|
| 1 | G-3720 | National Fuel Gas Supply Corporation. |
| 7 | G-3721 | Texas Eastern Transmission Corporation. |

APPENDIX—Continued

| Formerly: Texaco Producing Inc. Now: Texaco Exploration and Production Inc. FERC gas rate schedule No. | Certificate Docket No. | Purchaser |
|---|---|---|
| 45 | G-6265 | Lone Star Gas Company. |
| 117 | CI61-1599 | Ringwood Gathering Company. |
| 124 | CI63-914 | ANR Pipeline Company. |
| 136 | CI65-258 | Lone Star Gas Company. |
| 149 | CI67-1585 | Sunterra Gas Gathering. |
| 157 | G-18378 | Florida Gas Transmission Company. |
| 174 | CI69-441 | ANR Pipeline Company. |
| 175 | CI69-1026 | ANR Pipeline Company. |
| 199 | CI73-2 | ANR Pipeline Company. |
| 213 | CI75-769 | Trunkline Gas Company. |
| 228 | G-5333 | Texas Eastern Transmission Corporation. |
| 245 | G-5303 | K N Energy Inc. |
| 252 | G-5320 | Williams Natural Gas Company. |
| 253 | G-5321 | K N Energy Inc. |
| 272 | G-9701 | Texas Eastern Transmission Corporation. |
| 277 | G-10232 | Questar Pipeline Company. |
| 290 | G-5324 | Lone Star Gas Company. |
| 297 | G-17113 | Williams Natural Gas Company. |
| 302 | G-17962 | K N Energy Inc. |
| 313 | GI61-819 | ANR Pipeline Company. |
| 318 | G-5376 | Williams Natural Gas Company. |
| 326 | CI63-851 | K N Energy Inc. |
| 330 | CI64-2 | ANR Pipeline Company. |
| 331 | CI64-157 | K N Energy Inc. |
| 333 | CI63-1489 | Williams Natural Gas Company. |
| 335 | CI64-884 | Lone Star Gas Company. |
| 356 | CI67-30 | Williams Natural Gas Company and Zenith Natural Gas Company. |
| 414 | CI77-688 | ANR Pipeline Company. |
| 432 | CI72-255 | ANR Pipeline Company. |
| 433 | CI72-352 | ANR Pipeline Company. |
| 435 | CI73-318 | ANR Pipeline Company. |
| 436 | CI73-377 | ANR Pipeline Company. |
| 437 | CI75-24 | ANR Pipeline Company. |
| 447 | CI80-366 | ANR Pipeline Company. |

APPENDIX—Continued

| Formerly: Texaco Producing Inc. Now: Texaco Exploration and Production Inc. FERC gas rate schedule No. | Certificate Docket No. | Purchaser |
|---|---|---|
| 451 | CI81-130 | Texas Eastern Transmission Corporation. |
| 461 | CI81-140 | Texas Eastern Transmission Corporation. |
| 533 | CI81-349 | Williams Natural Gas Company. |
| 534 | CI82-425 | Texas Eastern Transmission Corporation. |
| 539 | CI83-315 | Texas Eastern Transmission Corporation. |
| 540 | CI83-220 | Texas Eastern Transmission Corporation. |
| 543 | CI83-378 | Texas Eastern Transmission Corporation. |
| 550 | CI84-598 | ANR Pipeline Company. |
| 551 | CI85-8 | Williams Natural Gas Company. |
| 555 | G-12425 | Texas Eastern Transmission Corporation. |
| 567 | CI71-837 | Florida Gas Transmission Company. |
| 574 | G-8493, G-12041 | Texas Eastern Transmission Corporation. |
| 577 | CI85-55 | Ringwood Gathering Company. |
| 585 | CI85-63 | Lone Star Gas Company. |
| 589 | CI85-67 | ANR Pipeline Company. |
| 597 | CI85-75 | ANR Pipeline Company. |
| 598 | CI85-76 | ANR Pipeline Company. |
| 599 | CI85-77 | ANR Pipeline Company. |
| 603 | CI85-81 | Williams Natural Gas Company. |
| 616 | CI85-608 | Oryx Energy Company. |
| 625 | CI87-576 | K N Energy Inc. |
| 626 | CI87-575 | K N Energy Inc. |

[FR Doc. 91-16065 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-180-000]

## Transcontinental Gas Pipe Line Corp.; Petition to Waive Certain Tariff Provisions

June 28, 1991.

Take notice that on June 26, 1991, Transcontinental Gas Pipe Line Corporation (Transco) filed a Petition for Authority to Waive Tariff Provisions of Rate Schedule LG-S. The proposed effective term of the waiver is from July 1, 1991 to the effective date of Transco's settlement in Docket No. CP88-391 *et al.*

Transco requests authority to allow Rate Schedule LG-S customers to receive liquefied natural gas (LNG) service without the requirement that such customer be purchasing gas from Transco under its CD, G or OG Rate Schedules. As an alternative to such purchase requirement, Transco seeks authority to allow a customer to arrange for a concurrent delivery of natural gas to Transco using Transco's Rate Schedule IT, or FT, in addition to the option of using Rate Schedule CD, G or OG. Transco states that the natural gas to be concurrently delivered may be gas purchased either from third parties or Transco under Transco's Rate Schedules IFS or IS.

Transco also states that its request for waiver reinstates a Rate Schedule LG-S waiver that expired on March 31, 1991, and that its settlement includes amendments to Rate Schedule LG-S that incorporate the same provisions as sought in its request for waiver.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 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 July 8, 1991. 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. 91-16066 Filed 7-5-91; 8:45 am]

BILLING CODE 6717-01-M

## Office of Hearings and Appeals

## Cases Filed During the Week of June 7 Through June 14, 1991

During the week of June 7 through June 14, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings

and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 1, 1991.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 7 through June 14, 1991]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/10/91 | Gulf/W. E. Jersey & Sons, Inc., Washington, DC | RR300-92 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The May 26, 1989 Decision and Order (Case No. RF300-5044) issued to W. E. Jersey & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |
| 6/10/91 | Gulf/Walters Distributing Company, Washington, DC. | RR300-91 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3574) issued to Walters Distributing Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |
| 6/10/91 | Sacramento Area Electrical Apprenticeship, San Jose, CA. | LFA-0131 | Appeal of an Information Request Denial. If granted: The May 16, 1991 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Sacramento Area Electrical Apprenticeship would receive access to a copy of the certified payroll of contract DE-AC 65-WNO6591 from December 31, 1991 to the present date. |
| 6/10/91 | Texaco/Belmont Texaco, Misa, AZ | RR321-71 | Request for modification/rescission in the Texaco refund proceeding. If granted: The September 7, 1990 Decision and Order (Case No. RF321-807 & RF321-8683) issued to Belmont Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding. |
| 6/12/91 | Ryder Truck Rental, Inc., Ryder Truck Rental, Inc., Hardin, KY. | RR272-78, RR272-79 | Request for modification/rescission in the Crude Oil refund proceeding. If granted: The August 25, 1988 and January 23, 1990 Decision and Order (Case Nos. RF272-73139 and RF272-327) issued to Ryder Truck Rental, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding. |
| 6/13/91 | Gulf/Berkely Gulf Service, Hanahan, SC | RR300-93 | Request for modification/rescission in the Gulf refund proceeding. If granted: The December 19, 1988 Decision and Order (Case No. RF300-6165) issued to Berkely Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |
| 6/13/91 | Texaco/Trade Winds Texaco, Clinton, OK | RR321-72 | Request for modification/rescission in the Texaco refund proceeding. If granted: The August 1, 1990 Decision and Order (RF321-1419 & RF321-6136) issued to Trade Winds Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding. |

| Date received | Name of refund proceeding/Name of refund application | Case No. |
|---|---|---|
| 6/10/91 | Terry Mitschele | RF335-20 |
| 6/10/91 | Newburg R-II School | RF335-21 |
| 6/10/91 | Petroleum Electronics Inc. | RF333-11 |
| 6/10/91 | Jobbers Buying Group | RF333-12 |
| 6/10/91 | Crago & Cook Enterprises, Inc. | RF333-13 |
| 6/11/91 | Oles Stewart | RF335-22 |
| 6/11/91 | Frank Boreu | RF335-23 |
| 6/12/91 | DH Ranch | RC272-122 |
| 6/13/91 | Clifford Hawgen | RC272-123 |
| 6/13/91 | Larry Thomas | RF304-12304 |
| 6/13/91 | Dept. of Water & Power | RF329-4 |
| 6/13/91 | Dept. of Water & Power | RF327-5 |
| 6/13/91 | Dept. of Water & Power | RF326-309 |
| 6/13/91 | Dept. of Water & Power | RF315-10148 |
| 6/13/91 | Dept. of Water & Power | RF311-13 |
| 6/14/91 | Mobay Corp. | RC272-124 |
| 6/14/91 | John Rostine Jr. | RF335-24 |
| 6/7/91 Thru 6/14/91 | Texaco Refund Applications Received | RF321-15712 Thru RF321-15739 |
| 6/7/91 Thru 6/14/91 | Crude Oil Applications Received | RF272-89391 Thru RF272-89420 |
| 6/7/91 Thru 6/14/91 | Gulf Oil Refund Applications Received | RF300-16956 Thru RF300-17053 |

[FR Doc. 91-16140 Filed 7-5-91; 8:45 am]

BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $9,000,000.00, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with Good Hope Refineries (Good Hope), Case No. LFX-0002. The OHA has determined that the funds will be distributed to customers which purchased refined petroleum products from Good Hope during the period August 19, 1973 through July 31, 1979.

**DATES AND ADDRESS:** Applications for Refund from the Good Hope settlement fund must be filed in duplicate, addressed to "Good Hope Special Refund Proceeding, Case No. LFX-0002," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applications for Refund from the Good Hope settlement fund must be postmarked by June 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $9,000,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with Good Hope Refineries (Good Hope), on October 13, 1983. The funds were paid by Good Hope towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has determined to distribute the Good Hope settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Good Hope who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered refined petroleum products which they purchased from Good Hope during the August 19, 1973 through July 31, 1979 refund period.

Any settlement funds remaining after valid claims are paid in the first stage may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Purchasers of regulated petroleum products from Good Hope during the August 19, 1973 through July 31, 1979, refund period may now file Applications for Refund from the Adams settlement fund. These Applications for Refund must be postmarked by June 30, 1992. Instructions for the completion of Applications for Refund are set forth in section V of the Decision that immediately follows this notice. Applications for Refund should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 28, 1991.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### Decision and Order—Supplemental Order

June 28, 1991.

*Name of Firm:* Good Hope Refineries.

*Date of Filing:* March 13, 1990.

*Case Number:* LFX-002.

On October 13, 1983, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds which Good Hope Refineries (Good Hope) remitted to the DOE pursuant to a consent order between the DOE and Good Hope. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requested that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations resolved by the Good Hope consent order. Good Hope remitted $1,550,000 in funds, and OHA subsequently issued a Decision and Order implementing special refund procedures. *See Good Hope Refineries,* 13 DOE ¶ 85,105 (1985) (*Good Hope I*). Good Hope recently remitted an additional $9,000,000 pursuant to the terms of the consent order, to which $702,966 in interest has accrued as of May 31, 1991. Pursuant to the terms of subpart V, the OHA must now take action to distribute these additional funds.

*I. Background*

From August 19, 1973 through July 31, 1976, Good Hope Industries, Inc. owned Good Hope Refineries, a crude oil refiner located in Metairie, Louisiana, and Gasland, Inc., a chain of motor gasoline stations operating in New England and the State of New York. Good Hope sold a range of refined petroleum products covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* As a result of its business activities, Good Hope was a "refiner" subject to the price regulations set forth at 10 CFR part 212, subpart E. During the period of petroleum price controls, the ERA conducted several audits of Good Hope's operations to determine its compliance with the DOE regulations. As a result of these audits, the ERA issued Notices of Probable Violation (NOPVs) alleging that Good Hope had not complied with Federal price regulations in its refined product sales.

In order to settle all claims and disputes between Good Hope and the DOE regarding the firm's compliance with the DOE regulations during the period August 19, 1973 through July 31, 1976, Good Hope and the DOE entered into a consent order on July 31, 1979. Under the terms of the consent order, Good Hope was required to provide $15,000,000 in restitution through: Price rollbacks, reductions in banks of unrecouped costs, and a series of cash payments to the DOE. The consent order covers all petroleum-related aspects of Good Hope Industries' operations. At the time that it entered into the consent order, Good Hope was involved in bankruptcy proceedings. Good Hope provided the DOE with $1,550,000 in restitutionary funds and subsequently fell into arrears on its scheduled payments.

Uncertain as to whether it would receive additional funds from Good Hope, the DOE instituted special refund procedures for the $1,550,000 that it had received pursuant to the consent order. *See Good Hope I.* The DOE received 23 applications for refund from purchasers of Good Hope's petroleum products. Of those applications, five were granted refunds, 12 were denied, and six were dismissed due to lack of adequate supporting information. The $1.9 million (including principal and interest), in consent order funds remaining unclaimed after the *Good Hope I* refund proceeding was remitted to the States for indirect restitution under the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501 *et seq. See* 51 FR 43964, 43966 (December 5, 1986).

Meanwhile, enforcement of the Good Hope consent order was referred to the Department of Justice. As part of the reorganization plan that permitted Good Hope to emerge from bankruptcy, the firm made an additional

$9,000,000 in payments to DOE.[1] The additional Good Hope funds are available for disbursement pursuant to subpart V. The funds are held in an interest-bearing escrow account at the Department of the Treasury awaiting a determination of their proper disposition.

*II. Jurisdiction and Authority*

The regulations codified in subpart V establish general guidelines which the OHA may use in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of subpart V and the authority of the OHA to design refund procedures may be found in *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). The present Decision and Order establishes the OHA's plans to distribute the funds remitted by Good Hope.

*III. Comments on the Proposed Refund Procedures*

On March 7, 1991, we issued a Proposed Decision and Order establishing tentative refund procedures for the distribution of the Good Hope consent order fund. The Proposed Decision and Order was published in the **Federal Register** and a 30-day period was provided for the submission of comments with regard to the Proposed Decision. In addition, the OHA mailed the PD&O to people we identified as interested parties. Two parties filed comments regarding the proposed refund procedures. These comments focused on three areas of concern: The refund procedures for applicants who received refunds in the first Good Hope refund proceeding, the length of the refund period, and the evidence necessary to rebut the spot purchaser presumption. We will address comments regarding each of these issues below.

A. Refund Procedures for Successful Applicants in Good Hope I

In the PD&O we briefly addressed the situation of applicants who filed applications for refund in Good Hope I and received refunds in that proceeding. We received comments regarding application procedures for those who were successful applicants in Good Hope I from Consolidated Edison Company of New York, Inc. (Con Ed), an applicant that received a refund in the first Good Hope proceeding. Because successful applicants in Good Hope I have already established the volume of product which they purchased from Good Hope, Con Ed argues, these applicants should not be required to re-establish their purchase volumes in the present proceeding.

We agree with Con Ed's contention that requiring successful Good Hope I applicants to provide purchase volume information in the present proceeding is unnecessary. Therefore, we will not require successful Good Hope I applicants to supply any further information documenting their purchases from Good Hope if, when they apply in the present proceeding, they claim the same purchase volume that they claimed in the first Good Hope refund proceeding. Any additional volumes claimed must be adequately documented.

B. Length of the Good Hope Refund Period

In Good Hope I and in the March 7, 1991 Good Hope II PD&O, we established that the Good Hope refund period begins August 19, 1973 and ends July 31, 1976. These dates represent the period covered by the consent order.

William H. Bode, an attorney who represents potential claimants, has submitted comments suggesting that the OHA extend the refund period to July 31, 1979. Mr. Bode argues that the consent order entered into by Good Hope and the DOE, as well as a Notice of Probable Violation issued by the Federal Energy Administration, indicate that Good Hope continued its alleged pricing violations past July 31, 1976.[2] Mr. Bode cites the January 28, 1977 NOPV, which states that some of Good Hope's alleged violations continued after January 1976. He also refers to the consent order, which requires that Good Hope reduce its aggregate level of unrecouped increased product and non-product costs available for recovery in the sale of motor gasoline by $2.5 million. The consent order additionally requires that Good Hope reduce its restricted bank by $2.5 million or make voluntary price reductions in the amount of $2.5 million. Mr. Bode asserts that the 1977 NOPV and the mandatory price reductions set forth in the 1979 consent order prove that Good Hope continued its pricing violations after the end of the specific period covered by the consent order, July 31, 1976. Because some alleged violations occurred after this date, Mr. Bode argues, OHA should extend the end of the refund period to July 31, 1979, the date on which the consent order was executed.

After reviewing the Good Hope consent order and the Two Good Hope NOPVs, we have concluded that the Good Hope refund period should be extended. Extending the refund period will enable a broader class of Good Hope purchasers to receive restitution for alleged overcharges, since post-1976 purchasers have never received any measure of restitution from Good Hope. Nothing in the consent order or the NOPVs bars us from extending the refund period, nor does anything in those materials lead us to believe that post-1976 purchasers of Good Hope products should not be eligible to receive refunds or that Good Hope's alleged violations ceased after July 1976. In previous instances where the consent order period did not correspond to the period in which the alleged violations occurred, we have adjusted the refund period to further the objective of equitable restitution under subpart V. *See Cloyce K. Box*, 15 DOE ¶ 85,001 (1986) (refund period restricted to the period during which the alleged violations occurred). Under the circumstances, equitable considerations dictate that we extend the refund period until July 31, 1979, the date on which the consent order was executed.

C. The Spot Purchaser Presumption

In the PD&O, as in most previous Decisions and Orders which set forth special refund procedures, we proposed to adopt a rebuttable presumption establishing that applicants that made only spot purchases from Good Hope did not sustain injury as a result of those purchases. In order to be eligible for a refund, we proposed, a spot purchaser applicant should submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Good Hope. We also stated that, as in previous refund proceedings, spot purchaser applicants could demonstrate injury by showing (a) that they made the spot purchases in order to fulfill obligations to their base period customers; and (b) that they resold the petroleum products at a loss.

In his comments, Mr. Bode suggests that altering the requirements for rebutting the spot purchaser presumption will enable a greater number of applicants in the Good Hope refund proceeding to actually receive refunds. Mr. Bode notes that of the 12 applications which were denied in the first Good Hope refund proceeding, 11 were denied because the applicants were spot purchasers. Mr. Bode argues that the second element required to rebut the spot purchaser presumption—a demonstration that the spot purchaser resold the product at a loss—makes it excessively difficult for an applicant to rebut the presumption. He contends that it is possible that a spot purchaser could have been overcharged by a consent order firm and resold the product at a profit without passing through the overcharge.

In lieu of a demonstration that they resold the product at a loss, Mr. Bode suggests that spot purchaser applicants in Good Hope II who wish to rebut the spot purchaser presumption of non-injury be permitted to make a demonstration similar to that required of an applicant who believes that it was injured by more than its volumetric share. Such an applicant must demonstrate that it was overcharged by a specific amount and that it absorbed the overcharges. This showing, Mr. Bode submits, should be sufficient to demonstrate not only that the applicant is entitled to an above-volumetric refund but also to rebut the presumption that spot purchasers were not injured by Good Hope's alleged overcharges.

The spot purchaser presumption in OHA refund proceedings has always been rebuttable. *See Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (Vickers). Applicants who wish to rebut the presumption must prove that they were injured by their purchases from the consent order firm. A showing that the product was resold at a loss is one way to satisfy this test. *See Saber/Mobil*, 14 DOE ¶ 85,170 (1986). However, a demonstration that an applicant was overcharged by a specific amount and that it absorbed the overcharge may also constitute a demonstration that the applicant was injured. This demonstration must be made in conjunction with proof that the purchases from the consent order firm were made in order to supply the applicant's base period

[1] The firm now does business as Transamerican Natural Gas Corporation.

[2] The Federal Energy Administration was charged with enforcing the Mandatory Oil Price and Allocation Regulations prior to the establishment of the Department of Energy in October 1977.

customers. Of course, each application will have to be considered on its own merits.

*IV. Refund Procedures*

We will implement a two-stage refund procedure for the Good Hope consent order fund. Purchasers of refined petroleum products from Good Hope during the consent order period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be disbursed to the state governments for indirect restitution. Our experience with subpart V refund proceedings indicates that potential claimants will consist of (1) end-users; (2) regulated entities, such as public utilities and cooperatives; (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

A. Claims Based on Alleged Overcharges

Insofar as possible, the consent order funds will be distributed to those customers of the consent order firms who were injured by the alleged price violations. The ERA audit file pertaining to the consent order lists the names of customers who purchased refined products from Good Hope, along with the pro rata amounts the ERA calculated these customers should be eligible to receive in a refund proceeding. This information is listed in the Appendix to this Decision and Order. The OHA used the audit file information to calculate refunds to eligible applicants in the first Good Hope refund proceeding, and we intend to use it in granting refunds to successful claimants in the present proceeding. However, we recognize that there may be purchasers of petroleum products from Good Hope who were not identified by the ERA and who may have been injured by the pricing practices of Good Hope during the relevant time period. Good Hope customers not so identified may also file applications for refund. Their refunds will be calculated using the volumetric method outlined below.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Good Hope during the August 19, 1973 to July 31, 1979 refund period. If the petroleum products were not purchased directly from Good Hope, the claimant must establish that they originated with Good Hope. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Good Hope's alleged overcharges. The two distinct elements generally required in such an injury showing are (1) the existence of "banks" of unrecovered increased product costs by a reseller claimant in excess of the refund sought, and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges.[2a]

*1. Use of Presumptions.* The use of certain presumptions permits claimants to participate in refund proceedings without incurring burdensome expenses, and aids in the efficient evaluation of refund claims. *See, e.g., Texaco Inc.*, 20 DOE ¶ 85,147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent subpart V regulations at 10 CFR 205.282(e). Accordingly, we adopt the presumptions described below.

a. Calculation of Refunds. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a subpart V proceeding, we believe that this information can be useful in determining a refund which closely corresponds to the injuries experienced. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). During the course of its audits, the ERA attempted to ascertain the identities of the injured parties and the precise amount of injury incurred. The ERA found that Good Hope's alleged overcharges affected some customers more than others who purchased comparable volumes. In light of this record, refunds for the firms listed in the Appendix will equal the refund amounts calculated by the ERA. These percentages, which are listed in the appendix, represent a prorated portion of the alleged overcharges by Good Hope. Successful applicants will also receive a pro rata share of the interest which has accrued since the funds were deposited in the escrow account.

A refund applicant which is not listed in the appendix to this Decision may receive a refund based upon a per gallon, or volumetric, basis.[2b] In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices. Under this volumetric method, a claimant's "allocable share" of the refined product portion of the consent order fund is equal to the number of gallons of covered petroleum products which it purchased from Good Hope during the consent order (refund) period multiplied by the per gallon (volumetric) refund amount.[3] In the present refund proceeding, we have computed the per gallon refund amount to be $0.0052.[4] Using this volumetric amount, a claimant would be eligible for a refund of $5,200 per one million gallons purchased.[5] In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Good Hope refined product pool since it deposit in the appropriate escrow account.[6]

We will adopt various presumptions concerning a claimant's injury, which are listed below.[7]

b. End-Users. In accordance with prior subpart V refund proceedings, we will adopt the presumption that end-users of Good Hope petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Good Hope's alleged overcharges. *See, e.g., Texas Oil and Gas Corporation*, 12 DOE ¶ 85,069 at 88,209 (1984) (TOGCO). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum price regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum

[2a] Claimants which have previously relied upon their banked costs to obtain refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. *See Standard Oil Co. (Indiana)/Suburban Propane Gas Corporation*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. *See Gulf Oil Corporation/Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986). *See Vickers Energy Corporation/Hutchens Oil Co. Inc.*, 11 DOE ¶ 85,070 at 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Good Hope. *See National Helium Corporation/Atlantic Richfield Company*, 11 DOE § 85,257 (1984), *affirmed sub nom. Atlantic Richfield Company* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985).

[2b] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Good Hope's alleged overcharges. *See, e.g., Mobile Oil Corporation/Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and it absorbed those overcharges. *See Panhandle Eastern Pipeline Company/Western Petroleum Company*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[3] Some of the petroleum products sold by Good Hope were exempted from the petroleum price regulations. These products and their respective decontrol dates are as follows: Residual Fuel Oil: June 1, 1976, Diesel Fuel, No. 2 Fuel Oil, Kerosene: July 1, 1976.

[4] We obtained the per gallon refund figure by dividing the Good Hope consent order fund ($9,000,000) by the approximate volume of refined petroleum products sold by Good Hope between the beginning of the refund period (August 19, 1973) and the dates of decontrol for the relevant products (1,699,975,030 gallons).

[5] Any applicant which establishes that it would receive a greater refund under the volumetric method than it would using the percentages in the appendix shall be entitled to the larger refund. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984).

[6] A purchaser of Good Hope products who did not submit a refund application prior to October 13, 1985, the initial filing deadline in the Good Hope refund proceeding, may, based on the total funds remaining in the Good Hope escrow account, nevertheless be eligible to receive a full volumetric or allocable share of the consent order fund from the funds now available.

[7] As in prior cases, we will establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 2,885 gallons of petroleum products from Good Hope would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. *See Exxon Corporation*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

cost increases Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. *See TOGCO* at 88,209. Accordingly, end-users will only be required to establish their purchase volumes of covered Good Hope petroleum products during the refund period to make a sufficient showing that they were injured by the alleged overcharges.

c. Regulated Entities and Cooperatives. A claimant whose prices for goods and services are regulated by a governmental body (e.g., public utilities), or an agricultural cooperative, need only submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated entity or a cooperative will be required to certify that it will (1) pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. *See Exxon* at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass any refunds resulting from the alleged overcharges to its customers and member-customers, respectively. Accordingly, these firms will not be required to make a detailed demonstration of injury to receive a refund.[8]

d. Retailers, Resellers, and Refiners. i. Small Claims Presumption. We will adopt a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Good Hope petroleum products and possesses an allocable share of the refined product pool of $10,000 or less, exclusive of interest, was injured by the alleged overcharges. *See Texaco* at 88,320. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Good Hope petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the number of routine refund claims expected.[9]

ii. Mid-Level Claims Presumption. Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Good Hope refined product pool exceeds $10,000, exclusive of interest, may elect to receive either $10,000 or 40 percent of its allocable share, whichever is greater, up to $50,000, also exclusive of interest.[10] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Good Hope's alleged overcharges. *See Total Petroleum, Inc.*, 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we have determined product-specific levels of injury through detailed evaluations. *See, e.g., Getty Oil Company*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corporation*, 16 DOE ¶ 85,381 at 88,737 (1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the Gulf determination is sound and, accordingly, will adopt, in the present refund proceeding, a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Good Hope petroleum products to be eligible for a refund of $10,000 or 40 percent of its allocable share, whichever is greater, up to $50,000.[11]

iii. Spot Purchasers. We will adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Good Hope did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 85,396–7. As we stated in a previous part of this Decision and Order, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Good Hope.[12]

B. Allocation Claims

We may also receive claims based upon Good Hope's alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations. 10 CFR part 211. Any such applications will be evaluated with reference to the standards established in subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as *Mobil Oil Corporation/Aromalene Oil Company*, 20 DOE ¶ 85,155 (1990); *Mobil Oil Corporation/Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate (1) the existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 CFR part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustained as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Good Hope. *See Marathon Petroleum Company/Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989), *action for review pending*, No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Good Hope. In determining the amount of any allocation refund, we will use any available information regarding the portion of the Good Hope consent order fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the Good Hope consent order is the result of a negotiated

[8] A cooperative's purchases of Good Hope petroleum products which were subsequently resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

[9] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 1,923,077 gallons of Good Hope petroleum products during the refund period or claim a refund of .1111% or less based on information from the ERA audit file.

[10] Under the mid-level injury presumption, a claimant which purchased between 1,923,077 gallons and 4,807,692 gallons of Good Hope petroleum products would be eligible to receive a principal (exclusive of interest) refund of $10,000. Similarly, a claimant who, according to the audit file, is eligible to receive between .1111% and .2777% of the alleged overcharges will be eligible to receive a principal refund of $10,000. A claimant purchasing between 4,807,692 gallons and 24,038,427 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share, and an applicant with a purchase volume in excess of 24,038,462 gallons would be eligible for a principal refund of $50,000. Moreover, a claimant entitled to receive between .2777% and 1.3888% of the alleged overcharges would be eligible to receive a principal refund equal to 40 percent of its allocable share, and an applicant whose share according to the audit file exceeds 1.3888% would be eligible for a principal refund of $50,000.

[11] If a claimant attempts to make a detailed injury showing for the purpose of obtaining 100 percent of its allocable share but, instead, submits evidence leading us to conclude that it passed through all of the alleged overcharges, or would be eligible for a refund of less than the appropriate presumptive injury level, it may not then be eligible for a refund under an injury presumption. Such a claimant would be granted a refund reflecting the level of injury exhibited in its injury showing. No refund will be granted if its submission shows that it was not injured in its purchases from Good Hope. *See Exxon* at 89,150 n. 10.

[12] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss. *See, e.g., Fletcher Oil & Refining*, 20 DOE ¶ 85,513 (1990), Texaco, Inc., 20 DOE ¶ 85,147 (1990).

settlement of the issues identified in the enforcement proceedings against Good Hope and the amount of the consent order is less than Good Hope's potential liability in those proceedings, we will reduce allocation refunds which would otherwise be disproportionately large. *See Amtel, Inc./ Whitco, Inc.*, 19 DOE ¶ 85,319 at 88,596 (1989) (refund reduced by the ratio of the settlement fund to the aggregate amount of alleged overcharges).

C. Refund Application Requirements

*1. Successful Applicants in Good Hope I.* To apply for a refund from the Good Hope settlement fund, claimants who received a refund in the first Good Hope refund proceeding should submit an Application for Refund containing the following information:

(1) Identifying information, including the claimant's name, address, social security number or employer identification number, indication as to whether or not the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) A statement as to whether the ownership of the applicant's firm changed during or has changed since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of the sale (e.g. sale of corporate stock, sale of company assets, etc.);

(3) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $10,000 (including one who according to the audit file is eligible to receive more than .2777% of the Good Hope consent order fund), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $10,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Good Hope's alleged overcharges. *See* section III.A *supra*;

(4) The statement which appears below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room of the Department of Energy.

*2. Other Applicants.* (1) Identifying information including the claimant's name, address, social security number or employer identification number, indication as to whether or not the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the Good Hope petroleum products; e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative or public utility;

(3) For each petroleum product which the applicant purchased from Good Hope, a separate monthly purchase schedule covering the period between the beginning of the refund period (August 19, 1973) and July 31, 1979, or the date of decontrol of the petroleum product, whichever occurred first. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable, conservative, and explained in detail;

(4) If the applicant was an indirect purchaser from Good Hope, (e.g., it purchased Good Hope petroleum products through another supplier), it should submit the name, address and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by Good Hope;

(5) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund it receives to its customers, will notify its state utility commission, or any other regulatory agency, or membership body of the receipt of any refund, and a brief description of how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $10,000 (i.e., whose purchases equal or exceed 1,923,077 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $10,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Good Hope's alleged overcharges. *See* section III.A *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Good Hope refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant was partially or entirely owned by Good Hope, it should explain this affiliation, including the years in which it was affiliated with Good Hope.[13]

(9) A statement as to whether the ownership of the applicant's firm changed during or has changed since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of the sale (e.g. sale of corporate stock, sale of company assets, etc.);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should be provided;

(11) The statement which appears below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room of the Department of Energy.

All applications should be either typed or printed and clearly labeled "Good Hope Special Refund Proceeding, Case No. LFX-0002." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish that this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than June 30, 1992, and sent to: Good Hope Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

D. Distribution of Funds Remaining After the First Stage

Any funds remaining in the refined product pool of the Good Hope consent order fund after the payment of all valid first-stage claims be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to pay the claims of injured parties in subpart V refund

[13] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates and subsidiaries of Good Hope were not injured by Good Hope's alleged overcharges. *See e.g., Marathon Petroleum Co./ EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is so because Good Hope presumably would not have sold petroleum products to an affiliate or subsidiary if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), *amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Moreover, if an affiliate or subsidiary of Good Hope was granted a refund, Good Hope would be indirectly compensated from a consent order fund remitted to settle its own alleged violations.

proceedings and make those funds available to state governments for use in four energy conservation programs specified in the statute.[14] The Secretary has delegated these duties to the OHA, and any funds in the Good Hope refined product pool that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted by Good Hope Refineries pursuant to the Consent Order executed on July 31, 1979 may now be filed.

(2) All Applications for Refund must be postmarked no later than June 30, 1992.

Dated: June 28, 1991.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 91-16141 Filed 7-5-91; 8:45 am]

BILLING CODE 6450-01-M

[14] Due to the small number of refunds which were granted in the first Good Hope special refund proceeding, the OHA has already taken action to allocate $2,361,124 ($2,250,000 in principal plus $111,124 in interest) to the state governments pursuant to the provisions of PODRA.

## ENVIRONMENTAL PROTECTION AGENCY

### Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP)

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

**ACTION:** Notice of staff work product availability and of public meeting.

**SUMMARY:** The States, in implementing the provisions of the Clean Air Act (CAA) Amendments, are regulating small businesses that frequently lack the technical expertise or financial resources to evaluate State regulations and determine the appropriate mechanisms for compliance. The Congress, in anticipation of the impact of these requirements on small businesses, added provisions designed to be implemented by EPA and the States to provide technical assistance and compliance information to small businesses. The provisions designed to provide small business assistance are described in Title V, section 507 of the CAA Amendments. Toward achieving this objective, EPA has completed the staff work product entitled *Guidelines for Implementation of Section 507 of the 1990 Clean Air Amendments.* The guidelines provide advice to the States and other interested parties on what will be an acceptable State program to be incorporated into a federally-approved State implementation plan (SIP) for establishing a SBAP as required in section 507 of the CAA Amendments.

Because of the broad interest in the SBAP, EPA believes that the public should have the opportunity to discuss the contents of the guidelines with EPA before preparation of a final document. The purpose of this notice is to announce the availability of a staff work product of the guidelines, and to announce a 1-day public meeting to discuss the small business assistance program. Written comments will be accepted until 30 days after the public meeting.

**DATE:** The public meeting will be held on Tuesday, July 23, 1991 from 9 a.m. to 4:30 p.m. at the address shown below. Written comments should be sent to: Regional Activities Section (MD-15), Attention: Racqueline Shelton, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**ADDRESS:** The public meeting will be held at the Sheraton Crystal City, Room Number 6, 1800 Jefferson Davis Highway, Crystal City, Virginia (Telephone (703) 620-9000).

*Availability of Staff Work Product:* The guidelines are available from EPA, QAQPS/AQMD/ROB (MD-15) Research Triangle Park, North Carolina. Please refer to *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Racqueline Shelton at (919) 541-0898 or Johnnie Pearson at (919) 541-5691; U.S. Environmental Protection Agency, AQMD (MD-15), Research Triangle Park, North Carolina 27711.

Dated: June 26, 1991.

**Lydia Wegman,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 91-15829 Filed 7-5-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59299A; FRL-3932-7]

### Certain Chemicals; Approval of a Test Marketing Exemption

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-91-19 and TME-91-20. The test marketing conditions are described below.

**EFFECTIVE DATE:** June 27, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Bailey, Program Manager, Program Development Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-503, 401 M St., SW., Washington, DC 20460, (202) 382-5591.

EPA has prepared an Administrative Record containing the documents considered in approving the TMEs. The Record containing confidential business information is held in the Agency's Confidential Business Information Center. A sanitized version of the Record is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**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, or any combination of such activities, for test marketing purposes will not present an unreasonable risk of injury to 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-91-19 and TME-91-20. EPA has determined that test marketing of the pesticide intermediates 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 health or the environment. Production volume and use must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to both TME-91-19 and TME-91-20:

1. The manufacturing process shall be conducted using exposure and release controls as described in the Test Marketing Exemption Application and supporting materials submitted to the Agency. These manufacturing process controls include the following:

a. Manufacturing will occur in an enclosed fermentation system.

b. Pressure in the production fermenter and the weight of the production material within it will be constantly monitored.

c. A fermenter scrubber system is attached to the exhaust air line which exits the fermenter.

d. A spill handling procedure has been developed which describes all details of containment.

e. Much of the production operation is controlled and monitored from remote control rooms, which limits worker exposure.

f. In addition, during certain procedures, workers are required to wear disposable dust respirators, safety glasses or goggles, rubber or polyethylene gloves, and uniforms.

2. 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:

a. Records of the quantity (i.e. number of batches and colony forming units (cfu) per batch) of the TME substances produced and the date of manufacture.

**TME-91-19**

*Date of Receipt:* May 28, 1991.

*Notice of Receipt:* June 7, 1991 (56 FR 26410).

*Applicant:* Mycogen Corporation.

*Chemical: Pseudomonas fluorescens* engineered to contain a gene for production of delta endotoxin from *Bacillus thuringiensis* (*B.t*) variety *kurstaki*, (MYX-7275).

*Use:* The TME substance is a pesticide intermediate. The intergeneric microorganisms produce the delta endotoxin during growth in a fermenter under controlled conditions, and are killed and fixed using a chemical procedure. Encapsulation of the *B.t* delta endotoxin within the killed, fixed *P. fluorescens* cell provides protection from the elements and extends the residual activity of the *B.t* toxin, which acts as a stomach poison for the target insects. The pesticide product is regulated by the Office of Pesticide Programs (OPP) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and is used for application primarily on cabbage and broccoli against the diamondback moth larvae and other lepidopterous insects.

*Production Volume:* 45 batches. The cfu per batch is confidential.

*Number of Customers:* The TME substance is a pesticide intermediate. After it has been killed and fixed, it is distributed to customers in the pesticidal end product. There is only one site of manufacture.

*Test Marketing Period:* July 1, 1991 – March 1, 1992.

**TME-91-20**

*Date of Receipt:* May 28, 1991.

*Notice of Receipt:* June 7, 1991 (56 FR 26410).

*Applicant:* Mycogen Corporation.

*Chemical: Pseudomonas fluorescens* engineered to contain a gene for production of delta endotoxin from *Bacillus thuringiensis* variety *san diego*, (MYX-1806).

*Use:* The TME substance is a pesticide intermediate. The intergeneric microorganisms produce the delta endotoxin during growth in a fermenter under controlled conditions, and are killed and fixed using a chemical procedure. Encapsulation of the *B.t* delta endotoxin within the killed, fixed *P. fluorescens* cell provides protection from the elements and extends the residual activity of the *B.t* toxin, which acts as a stomach poison for the target insects. The pesticide product is regulated by the Office of Pesticide Programs (OPP) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and is used for application primarily on potatoes against the Colorado Potato Beetle and certain other coleopteran insects.

*Production Volume:* 18 batches. The cfu per batch is confidential.

*Number of Customers:* The TME substance is a pesticide intermediate. After it has been killed and fixed, it is distributed to customers in the pesticidal end product. There is only one site of manufacture.

*Test Marketing Period:* July 1, 1991 – March 1, 1992.

*Finding of No Unreasonable Risk:* The TME substances TME-91-19 and TME-91-20 will not present an unreasonable risk to human health or the environment based on the balancing of risk and benefit considerations discussed below. This determination is made principally on the fact that the TME substances will only be used for a limited period of time and in limited quantities for the purpose of developing beneficial pesticides which have the potential to replace far more hazardous materials.

*Risk Assessment:* Available data on TME-91-19 and TME-91-20 provide no indication that these organisms present adverse effects to human health during the manufacturing process. Exposure will be limited by the process controls described in the application and highlighted above. Because of these release controls and the fact that the microorganisms are killed in the fermenter, the opportunity for transfer of the plasmid producing the toxin to other microorganisms in the environment is slight. This possibility is further minimized by the small number of organisms that are capable of acting as available receptors and the fact that gene transfer by conjugation requires genetic material not included in the production microbe.

EPA identified no significant environmental concerns for the test market substances.

During manufacturing, workers will minimize exposure through the use of remote sampling and treatment procedures, as well as through the use of respirators, protective gloves, clothing, and goggles.

*Benefits Summary:* The pesticidal intermediate and end products for TME-91-19 and TME-91-20 are of very low toxicity when compared to chemical pesticides. The delta endotoxins are highly specific and no evidence of toxicity has been found in tests of the end products on mammals, birds, fish, and non-target beneficial insects. The products are applied at low application rates in the range of 18 grams of toxin per acre, and are exempt from the (OPP) requirement of a crop residue tolerance. Furthermore, encapsulation of the *B.t.* toxin in the *P. fluorescens* cell extends the effective use range of the *B.t.* toxin from 1-3 days against pests to 5-7 days.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: June 27, 1991.

**John W. Melone,**

*Director, Chemical Control Division, Office of Toxic Substances.*

[FR Doc. 91-16123 Filed 7-5-91 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted To OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it

has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

*Type of Review:* Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

*Title:* Annual Report of Trust Assets.

*Form Number:* FFIEC 001.

*OMB Number:* 3064–0024.

*Expiration Date of OMB Clearance:* September 30, 1991.

*Frequency of Response:* Annually.

*Respondents:* Insured depository institutions granted consent by the FDIC to exercise trust powers, and their trust subsidiaries and affiliates.

*Number of Respondents:* 2,344.

*Number of Responses Per Respondent:* 1.

*Total Annual Responses:* 2,344.

*Average Number of Hours Per Response:* 3.4.

*Total Annual Burden Hours:* 7,890.

*OMB Reviewer:* Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0024), Washington, DC 20530.

*FDIC Contact:* Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted before September 6, 1991.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The Annual Report of Trust Assets, submitted by insured depository institutions granted consent by the FDIC to exercise trust powers, and their trust subsidiaries and affiliates, is the only source of information available regarding market values of assets held in trust departments. The information is compiled by the FDIC and published in an annual report.

Dated: July 1, 1991.

Federal Deposit Insurance Corporation.

**Hoyle L. Robison,**

*Executive Secretary.*

[FR Doc. 91–16127 Filed 7–5–91; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL MARITIME COMMISSION

### Tampa Port Authority/Petroleum Packers, Inc., Marine Terminal Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224–011010–001.

*Title:* Tampa Port Authority/Petroleum Packers, Inc., Marine Terminal Agreement.

*Parties:*

Tampa Port Authority (Port),

Petroleum Packers, Inc. (PPI).

*Filing Party:* H.E. Welch, Director of Traffic, Port of Tampa, 811 Wynkoop Road, Tampa, Florida 33601.

*Synopsis:* The Agreement, filed June 27, 1991, amends the basic agreement to increase the acreage of the leased premises at Hookers Point in the Port of Tampa from approximately 4.211 acres to approximately 6.906 acres, to include Building 123B. The Agreement also increases the land rent commencing July 15, 1991 to $50,060 through March 14, 1992 and to $54,310 for the period March 15, 1992 through March 14, 1997. PPI has two option periods of 5 and 7 years respectively with rental rates adjusted for each option exercised.

By Order of the Federal Maritime Commission.

Dated: July 2, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91–16086 Filed 7–5–91; 8:45 am]

BILLING CODE 6730–01–M

### Port Authority of New York and New Jersey, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–200539.

*Title:* Port Authority of New York and New Jersey/Gdynia America Lines, Inc. Marine Terminal Agreement.

*Parties:*

Port Authority of New York & New Jersey (Port Authority),

Gdynia America Lines, Inc. (Gdynia).

*Synopsis:* The agreement, filed June 27, 1991, provides for the Port Authority to pay Gdynia $25.00 per import container and $50.00 per export container with cargo loaded or unloaded from a vessel at the Port of New York/New Jersey (Port) and shipped by rail to or from points more than 260 miles from a marine terminal within the Port. Gdynia shall submit to the Port Authority an invoice for all containers for which it seeks payment.

*Agreement No.:* 224–200538.

*Title:* Port Authority of New York and New Jersey/OOCL (USA) Inc. Marine Terminal Agreement.

*Parties:*

Port Authority of New York & New Jersey (Port Authority),

OOCL (USA) Inc. as agents for: Orient Overseas Container Line (OOCL).

*Synopsis:* The Agreement, filed June 27, 1991, provides for the Port Authority to pay OOCL $25.00 per import container and $50.00 per export container with cargo loaded or unloaded from a vessel at the Port of New York/New Jersey (Port) and shipped by rail to or from points more than 260 miles from a marine terminal within the Port. OOCL shall submit to the Port Authority an invoice for all containers for which it seeks payment.

By Order of the Federal Maritime Commission.

Dated: July 2, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-16085 Filed 7-5-91; 8:45 am]

BILLING CODE 6730-01-M

## Ocean Freight Forwarder License Revocations; P.J. Whelan & Co. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

*License Number:* 1611.
*Name:* P.J. Whelan & Co.
*Address:* 1636 Spring Meadow Blvd., Norfolk, VA 23518.
*Date Revoked:* April 6, 1991.
*Reason:* Failed to furnish a valid surety bond.

*License Number:* 1034.
*Name:* C.L. Hutchins & Co., Inc.
*Address:* 10th Avenue Terminal, P.O. Box 2568, San Diego, CA 92112.
*Date Revoked:* April 24, 1991.
*Reason:* Failed to furnish a valid surety bond.

*License Number:* 1535R.
*Name:* Rana International, Inc.
*Address:* 130 Houston Street, P.O. Box 1246, Savannah, GA 31402.
*Date Revoked:* May 6, 1991.
*Reason:* Surrendered license voluntarily.

*License Number:* 2240R.
*Name:* American Vanpac Van Lines, Inc. dba Richmond Export Services.
*Address:* 2114 Macdonald Avenue, Richmond, CA 94901.
*Date Revoked:* May 21, 1991.
*Reason:* Surrendered license voluntarily.

*License Number:* 2384R.
*Name:* Ark International Forwarding, Inc.
*Address:* P.O. Box 520012, Miami, FL 33152.
*Date Revoked:* May 28, 1991.
*Reason:* Surrendered license voluntarily.

*License Number:* 3401.
*Name:* J.H. Bachmann California Inc.
*Address:* 811 Arbor Vitae Street, Inglewood, CA 90301.
*Date Revoked:* May 31, 1991.
*Reason:* Surrendered license voluntarily.

*License Number:* 2900.
*Name:* Seafast, Inc.
*Address:* 3900 NW., 79th Ave., suite 219, Miami, FL. 33166.
*Date Revoked:* June 10, 1991.
*Reason:* Surrendered license voluntarily.

*License Number:* 2989.
*Name:* Encore Cargo Services.
*Address:* 50-58 Alco Place, Baltimore, MD 21227.
*Date Revoked:* June 12, 1991.
*Reason:* Surrendered license voluntarily.

*License Number:* 2678.
*Name:* Sauter Corporation.
*Address:* 633 Matzinger Rd., Toledo, OH 46312.
*Date Revoked:* June 19, 1991.
*Reason:* Failed to furnish a valid surety bond.

**Bryant L. VanBrakle,**

*Acting Director, Bureau of Domestic Regulation.*

[FR Doc. 91-16087 Filed 7-5-91; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

**[Announcement Number 134]**

### Availability of Funds for Fiscal Year 1991 for Cooperative Agreement for an Epidemiologic Study to Determine the Incidence and Extent of Human Immunodeficiency Virus (HIV) Infection in American Blood Donors

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1991 for a cooperative agreement with the American Red Cross (ARC) to provide assistance for an epidemiologic surveillance study to determine the incidence and extent of infection with human immunodeficiency virus (HIV) and related retroviruses in American blood donors and to monitor trends over time using computer software developed by ARC and CDC. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Human Immunodeficiency Virus (HIV) infection. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

#### Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and Section 317(k)(3) of the Public Health Service Act (42 U.S.C. 247b(k)(3)).

#### Eligible Applicant

This is not a formal request for applications. Assistance will be provided only to ARC for the support of this project. No other applications are solicited or will be accepted. Eligibility is limited to ARC since it is the major collector of blood for transfusion in the United States, with about six million units collected annually. This number comprises approximately half the nation's blood supply. The other half is collected by numerous independent local blood banks and the military. ARC is national in scope, with collection in at least parts of most States in the continental United States. Because the prevalence of HIV infection, and especially the incidence of new infection, in blood donors is low (due to screening of potential donors for known risk factors for HIV infection), very large numbers of donors need to be studied to obtain meaningful results. Additionally, HIV infection levels vary considerably by geographic area. It is essential to obtain HIV infection data from across the entire United States.

The ARC, funded through cooperative agreement U64/CCU302659 awarded by the CDC in Fiscal Year 1986, has four years of experience in epidemiologic surveillance studies of HIV infection. It has developed a system to collect, manage, and analyze at least 6 million records a year on donations that have been tested for HIV infection. There is no other organization that is known to have already collected, managed, and analyzed millions of blood donation records which would enable the monitoring of trends in HIV infection from as early as 1986.

#### Availability of Funds

Approximately $120,000 will be available in Fiscal Year 1991 to fund this award. This funding estimate may vary and is subject to change. The award will begin September 29, 1991, and will be funded with 12-month annual budget periods within a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of the funds.

#### Purpose

The purpose of this cooperative agreement is to continue assistance to the American Red Cross for:

A. Determining and monitoring the extent of HIV infection in blood donors.

B. Analyzing the characteristics of infected donors to strengthen the effectiveness of the donor deferral and screening process.

C. Analyzing the socio-demographic characteristics of donors to assess the degree of representativeness of the general population.

D. Monitoring for emergence of additional human immunodeficiency viruses as well as other viruses relevant to the epidemiology of AIDS.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under A. below and CDC shall be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

*A. Recipient Activities*

1. Collect and analyze, on a national scale, serologic and demographic data on first-time and repeat blood donors to determine the prevalence of HIV infection by person, place, and time.
2. Continue to refine the data management system for the study.
3. Provide training for data management personnel at the ARC regional level.
4. Identify areas experiencing appreciable percentages of true seropositives which would permit ARC to determine reasons why the process of screening donors for risk factors for HIV infections was not fully effective.
5. Analyze the socio-demographic characteristics of blood donors to assess the degree to which they represent the general U.S. population.
6. Using the computerized surveillance software developed by ARC and CDC, prepare summary data to be used for other epidemiologic studies of HIV infection in blood donors.
7. Develop and implement CDC/ARC collaborative studies for national surveillance of HIV-2 and other viruses relevant to the epidemiology of AIDS.
8. Collaborate with CDC in the presentation and dissemination of study results.
9. Share data on a line-by-line basis with CDC within four months of the end of the quarter in which the data were collected.

*B. CDC Activities*

1. Provide technical assistance in maintaining the data management system.
2. Monitor trends in the prevalence of HIV infection in first-time donors and the incidence of new HIV infection in repeat donors.
3. Evaluate and validate trend findings by comparison with trend data from other national and regional sentinel surveillance activities.
4. Collaborate in the analysis of the socio-demographic characteristics of blood donors to assess the degree to which they represent the general U.S. population.
5. Provide technical collaboration to the applicant in the data analyses, screening process and socio-demographic studies.
6. Collaborate in the presentation and dissemination of study results.

**Evaluation Criteria**

The application will be evaluated according to the following criteria:

1. The applicant must have the ability to process six million donations annually from at least 20 states.
2. The extent to which the proposed objectives are measurable, specific, time-phased, and related to required recipient activities and program purpose.
3. The quality of the applicant's plan for conducting program activities and the potential effectiveness of the proposed methods in meeting its objectives.
4. To the extent that the budget request and proposed use of project funds are appropriate and reasonable.

Data collection initiated under this cooperative agreement has been approved by the Office of Management and Budget (OMB No. 0920-0232, "Family of HIV Seroprevalence Surveys").

**Executive Order 12372 Review**

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.118.

**Application Submission and Deadline**

A signed original and two copies of the application, PHS Form 5161-1, must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before July 12, 1991.

1. *Deadline:* An application shall be considered as meeting the deadline if it is either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* An application that does not meet the criteria in a. or b. above are considered late. A late application will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

If you are interested in obtaining additional information regarding this project, please reference Announcement Number 134, Epidemiologic Study to Determine the Incidence and Extent of Human Immunodeficiency Virus (HIV) Infection in American Blood Donors, and contact the following:

Business Management Technical Assistance: Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, or by calling (404) 842-6508 or FTS 236-6508.

Programmatic Technical Assistance: Lyle Petersen, M.D., Division of HIV/AIDS, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop E-46, Atlanta, Georgia 30333 (404) 639-2082 or FTS 236-2082.

A copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) referenced in the **INTRODUCTION** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238).

Dated: June 28, 1991.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 91-16033 Filed 7-5-91; 8:45 am]

BILLING CODE 4160-18-M

---

## Health Care Financing Administration

## Privacy Act of 1974; Report of New System

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Quality Assurance

for the Home Health Agency (HHA) Prospective Payment Demonstration," HHS/HCFA/ORD No. 09-70-0051. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the systems be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

**DATES:** HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on July 8, 1991.

**ADDRESSES:** The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 108 Security Office Park Building, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Vranas, Division of Long Term Care Experimentation, Office of Research and Demonstrations, Health Care Financing Administration, room 2-E-5 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 966-6666.

**SUPPLEMENTARY INFORMATION:** HCFA proposes to initiate a new system of records, collecting data under the authority of section 4027 of Public Law 100-203, the Omnibus Budget Reconciliation Act of 1987. The purpose of this system of records is to provide data necessary to monitor the quality of home health care furnished by HHAs participating in HCFA's HHA Prospective Payment Demonstration. The first phase of this demonstration will test prospective payment on a per-visit basis for HHAs that provide Medicare-covered home health services. This phase of the demonstration is being conducted at 67 HHAs located in California, Florida, Illinois, Massachusetts, and Texas. HCFA plans to implement a second phase testing a per-episode method of prospective payment, beginning in late 1992. The system will furnish information necessary to determine the impact of prospective rate-setting on HVAs' costs and operations, quality of care, and Medicare expenditures. Each HHA that participates will do so for 3 years. However, since HHAs are being phased into and out of the demonstration based on their fiscal year end dates, the actual operational period of the first phase of the demonstration is expected to be 3 years and 9 months.

The system of records is expected to include data collected from the Medicare claims files and furnished to the contractor by HCFA or its fiscal intermediary; plans of treatment and related information from HHAs' medical records; patient intake forms that will be completed by HHAs in the demonstration to supplement the Medicare plans of treatment; information from the implementation contractor, Abt Associates, Inc., that is assisting HCFA in monitoring the demonstration's operations; and assessments by the quality review contractor of the quality of care received by a sample of patients. Depending on the size of the HHAs that are chosen to participate in the demonstration, information will be collected on between 3,000 and 10,000 Medicare home health patients. This information will be collected by a quality review contractor that will assist HCFA in monitoring the quality of care furnished by participating HHAs.

In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for a "routine use"—that is, disclosures which are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Medicare program for which we are responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: June 29, 1991.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

**09-70-0051**

**SYSTEM NAME:**

Monitoring of the Home Health Agency Prospective Payment Demonstration.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Abt Associates Inc., 55 Wheeler Street, Cambridge, Massachusetts 02138-1168.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Medicare beneficiaries who receive Medicare-covered home health services at one of the 67 HHAs in five States (California, Florida, Illinois, Massachusetts, and Texas) chosen to participate in the demonstration.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system will contain information concerning a patient's name, Health Insurance Claim Number, demographic characteristics (e.g., age, sex) medical diagnoses and conditions, receipt of services, functional status, and utilization of home health services.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 4027 of Public Law 100-203, the Omnibus Budget Reconciliation Act of 1987.

**PURPOSE(S):**

To provide data necessary to assess and monitor the quality of home health care provided by HHAs participating in the Home Health Agency Prospective Payment Demonstration.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made:

1. To HCFA's implementation contractor for the demonstration, Abt Associates Inc., who will use this information to assist HCFA in general monitoring of project operations; and to Mathematica Policy Research, Inc., HCFA's evaluation contractor for the demonstration, for purpose of evaluating the effects of HHA prospective payment on quality of health care. Relevant records will be disclosed to such contractors. These contractors shall be required to maintain Privacy Act safeguards with respect to such records.

2. To the HHAs that provided the home health care in order to investigate potential quality problems and notify the HHAs of any confirmed quality problems that are found.

3. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

a. The Department of Health and Human Services (HHS), or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that each disclosure is compatible with the purpose for which the records were collected.

5. To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system, or for developing, modifying, and/or manipulating it with ADP software. Data would also be available to users incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

6. To an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law.

d. Secures a written statement attesting to the recipient's understanding of a willingness to abide by these provisions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and magnetic media.

**RETRIEVABILITY:**

Information will be retrieved by beneficiary's name and health insurance claim number.

**SAFEGUARDS:**

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate automated data processing (ADP) system security procedures required by the HHS Information Resources Manual (e.g., use of passwords) and the National Bureau of Standards Federal Information Processing Standards. Similar safeguards will be followed if any records are transferred to HCFA.

**RETENTION AND DISPOSAL:**

Hardcopy data collection forms and magnetic media with identifiers will be retained in secure storage areas. Records will be retained for one year after the termination of the monitoring contract. The disposal techniques of degaussing will be used to strip magnetic media of identifying names and numbers. Hardcopy records will be destroyed at this time.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

**NOTIFICATION PROCEDURE:**

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name, address, and health insurance number.

**RECORD ACCESS PROCEDURE:**

Same as notification procedures. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations 45 CFR 5b.6.

**CONTESTING RECORD PROCEDURE:**

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department Regulations, 45 CFR 5b.7.

**RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system are expected to include: Data collected from the Medicare claims files; Medicare Statistical Systems; HHA plans of treatment and related patient records; supplemental patient intake forms prepared by the HHAs; and results of quality assessments conducted by the contractor.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 91-16088 Filed 7-5-91; 8:45 am]

BILLING CODE 4120-03-M

---

## Health Resources and Services Administration

### Final Funding Priority for Nurse Practitioner and Nurse Midwifery Programs

The Health Resources and Services Administration (HRSA) announces the final funding priority for fiscal year (FY) 1992, Grants for Nurse Practitioner and Nurse Midwifery Programs presently authorized under the authority of section

822(a) of the Public Health Service (PHS) Act, as amended. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 822(a) of the Public Health Service Act, as implemented by 42 CFR part 57, subpart Y, presently authorizes assistance to meet the costs of projects to:

(1) Plan, develop and operate

(2) Expand, or

(3) Maintain programs for the training of nurse practitioners and/or nurse midwives.

Eligible applicants are public or nonprofit private schools of nursing and public health, public or nonprofit private hospitals, and other public or nonprofit entities. Also eligible are public or nonprofit private schools of medicine which received grants or contracts under section 822(a) prior to October 1, 1985. The period of Federal support should not exceed three years.

**National Health Objectives for the Year 2000**

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238).

**Education and Service Linkage**

As part of its long range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

**Review Criteria**

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in Section 57.2405 of the program regulations and the Appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act;

3. The capability of the applicant to carry out the proposed project;

4. The extent to which the project has joint program direction by qualified nurse and physician educators;

5. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

6. The potential of the project to continue on a self-sustaining basis after the project period.

In addition, the following mechanisms as defined below may be applied in determining the funding of approved applications:

1. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria; and

2. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For FY 1992, the following statutory and Departmental special considerations will be applied.

**Statutory Special Considerations**

In accordance with the statute, section 822, the Secretary will give special consideration to applications for grants for programs for the education of nurse practitioners and nurse midwives who will practice in health professional shortage areas (designated under section 332 of the PHS Act) and for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care and long term care—including home health care and institutional care to such patients) and education to meet the particular needs of nursing home patients and patients confined to their homes.

**Funding Priorities for Fiscal Year 1992**

The following funding priorities were established in FY 1991, after public comment, and the Administration is extending these priorities in FY 1992.

In determining the order of funding of approved applications a funding priority will be given to:

(1) *Graduate Degree Programs.* Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average, or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. Applicant institutions submitting applications to establish the first master's level nursing program in that institution may qualify for a funding priority if they can demonstrate an enrollment of minority students in their undergraduate program in excess of the national average for undergraduate nursing programs.

(2) *For Certificate Level Programs.* Applicant institutions which demonstrate an increase in minority enrollment in the program which exceeds the program's prior 3-year average.

A proposed funding priority was published in the **Federal Register** on March 25, 1991 (56 FR 12379) for public comment. Three comments were received concerning the funding priorities. The respondents also commented on aspects of the notice for which public comment was not requested. The comments were in support of the proposed funding priority for FY 1992 which will be retained as follows:

**Final Funding Priority**

A funding priority be given to applicant institutions that have formal linkages between the education program for which the applicant is seeking funding and service programs which provide comprehensive primary care services to the underserved. This priority is designed to increase the delivery of health care services to underserved populations and to foster the interest of health professionals to serve in underserved areas following graduation.

Should additional programmatic information be required, please contact: Dr. Thomas P. Phillips, Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 5C-26, Rockville, Maryland 20857, telephone: (301) 443-6333.

This program is listed at 93.298 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 28, 1991.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 91-16037 Filed 7-5-91; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503 telephone (202) 395-7340.

*Title:* OMB Survey of BIA and Comparable Public Schools 1989-1990 School Year.

*OMB approval number:* New Collection.

*Abstract:* The Office of Management and Budget and the Bureau of Indian Affairs wall collect basic programmatic information and performance indicators to evaluate BIA's elementary and secondary education programs. The evaluation will compare per pupil expenditures, educational quality and academic achievement in a sample of BIA schools with 40 comparable public schools.

*Bureau Form Number:* New form.

*Frequency:* Once.

*Description of Respondents:* Public school districts.

*Annual responses:* 40.

*Annual Burden:* 320.

*Bureau Clearance Officer:* Gail Sheridan, (202) 208-2685.

Dated: June 28, 1991.

**Dr. Kenneth G. Ross,**

*Director, Office of Indian Education Programs.*

[FR Doc. 91-16110 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-02-M

### Bureau of Land Management

[WY-920-01-4120-11); WYW124274]

### Coal Leases, Exploration Licenses, etc.; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of invitation for coal exploration license.

**SUMMARY:** Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as subpart 3410, title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with AMAX Coal Company as a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, Wyoming:

**Exploration License Application No. WYW124274**

T. 50 N., R. 72 W., 6th P.M., Wyoming
Sec. 4: Lots 1 and 2;
T. 51 N., R. 72 W., 6th P.M., Wyoming
Sec. 33: Lots 1 thru 16;
Sec. 34: Lots 3 thru 6, 9 thru 16.
Containing 1,279.40 acres

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality information and coal seam geometry.

**ADDRESSES:** The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan is available for review during normal business hours in the following offices (serialized under number WYW124274): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

**SUPPLEMENTARY INFORMATION:** This notice of invitation will be published in *The News-Record* of Gillette, Wyoming, once each week for two (2) consecutive weeks beginning the week of July 8, 1991, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and AMAX Coal Company no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: AMAX Coal Company, Attn: Mike E. Nicholson, P.O. Box 3005, Gillette, WY 82717-3005, and the Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003. The foregoing is published in the **Federal Register** pursuant to title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

Dated: July 1, 1991.

**F. William Eikenberry,**

*Associate State Director.*

[FR Doc. 91-16112 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-22-M

[G-010-4320-12/G1-0118]

### District Grazing Advisory Board Meeting, Albuquerque, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Albuquerque District Advisory Board Meeting.

**SUMMARY:** The BLM's Albuquerque District Grazing Advisory Board will meet on Tuesday, August 13, 1991, at 9:30 a.m., in the BLM District Office located at 435 Montano NE in Albuquerque, New Mexico.

The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Status of the District Animal Damage Control Plan.
3. Range improvements progress report for FY 91.
4. Range Improvement proposals ranking for FY 92.
5. Range of Our Vision Slide Show and discussion on BLM Range Forum.
6. Discussion on public grazing land controversies, the Livestock Industry Role.
7. Update of Use of Volunteers in Rangeland Management.
8. Review of Rio Puerco Pipeline User Fee.

The meeting is open to the public. Anyone interested in attending this meeting to make a presentation must notify the District Manager by August 9, 1991. Written statements may also be filed for the Board's consideration.

Dated: June 28, 1991.

**Andrew Aboytes,**

*Acting Associate District Manager.*

[FR Doc. 91-16052 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-FB-M

[MT-070-01-4212-12; MTM72144]

## Montana; Realty Action: Exchange

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Designation of public lands in Madison and Park Counties, Montana, for transfer out of Federal ownership in exchange for lands owned by the State of Montana, Department of Highways.

**SUMMARY:** BLM proposes to exchange public land with the State of Montana in order to acquire lands that provide high recreational opportunities and access to the Madison River. The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716

**Principal Meridian, Montana**

T. 10 S., R. 1 E., Section 6, N½ SE¼ NW¼;
T. 7 S., R. 7 E., Section 20, Lot 11, formerly described as part of E½ SW¼;

The lands described above comprise 29.15 acres, more or less, in Madison and Park Counties. These lands are segregated from entry under the mining laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Montana, upon publication in the **Federal Register** of termination of the segregation, or two years from the date of this publication, whichever comes first.

A determination on the disposal of these lands will await a final land use decision. Prior to the completion of this land use decision, another Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

**DATES:** On or before August 22, 1991, interested parties may submit comments to the Bureau of Land Management at the address below.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the exchange is available at the Dillon Resource Area Office, P.O. Box 1048, Dillon, MT 59725.

Dated: June 27, 1991.

**Michele D. Good,**

*Acting District Manager.*

[FR Doc. 91-16054 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-DN-M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 687932

*Applicant:* Adriatic Animal Attractions, Inc., Orlando, FL.

The applicant requests a permit to export or reexport and reimport 33 tigers (*Panthera tigris*) born in the United States to Italy and return for exhibition and educational display. The tigers are to be used in performances for the American Circus and for display at a circus zoo. Information will be provided to the public about the ecological needs and conservation of the species.

PRT 759674

*Applicant:* Gibbon & Gallinoceous Bird Center, Santa Clarita, CA.

The applicant requests a permit to import one male Northern white-cheeked gibbon (*Hylobates consolor leucogens*), captive born at the Melbourne Zoological Gardens, Parkville, Victoria, Australia, for captive breeding and scientific research.

PRT 759399

*Applicant:* Minnesota Zoo, Apple Valley, MN.

The applicant requests a permit to import one captive-born female Amur leopard (*Panthera pardus orientalis*) from the Dortmund Zoo, Dortmund, Germany, for enhancement of propagation and survival of the species through educational display and captive-breeding.

PRT 760039

*Applicant:* Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to import blood serum taken from a captive born male and female Southern pudu (*Pudu pudu*), Wuppertal, Germany, for enhancement of propagation and survival of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: July 1, 1991.

**Maggie Tieger,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 91-16058 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Mississippi River Coordinating Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** August 5, 1991; 6 p.m. to 9:30 p.m.

**ADDRESSES:** Earle Brown Heritage Center, 6155 Earle Brown Drive, Brooklyn Center, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Norman J. Reigle, Superintendent, Mississippi National River and Recreation Area, Post Office Box 65456, St. Paul, Minnesota 55165-0456, (612) 290-4160.

**SUPPLEMENTARY INFORMATION:** The Mississippi River Coordinating Commission was established by Public Law 100-696, November 18, 1988.

Dated: June 28, 1991.

**Don H. Castleberry,**

*Regional Director, Midwest Region.*

[FR Doc. 91-16149 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-70-M

### Mississippi River Corridor Study Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act, 5 U.S.C. appendix (1988).

**DATES & TIME:** August 6, 1991, 3:30 p.m. and continuing August 7, 1991, 8:30 a.m. until 4:30 p.m.; and August 8, 1991; 8:30 a.m. until 3:30 p.m. if warranted.

**ADDRESSES:** Holiday Inn, I-55/I-40 at Ingram, West Memphis, Arkansas.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are

limited and persons will be accommodated on a first come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. It is intended that the meeting will conclude on August 7 but if necessary will be continued until August 8. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082.

**SUPPLEMENTARY INFORMATION:** The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 28, 1990.

Dated: June 28, 1991.

**Don H. Castleberry,**

*Regional Director, Midwest Region.*

[FR Doc. 91-16150 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-70-M

## Upper Delaware Scenic and Recreational River

**AGENCY:** National Park Service; Upper Delaware Citizens Advisory Council.

**ACTION:** Notice of meeting date.

**SUMMARY:** This notice establishes an additional date of July 26, 1991, for a regular business meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting change is required under the Federal Advisory Committee Act.

**DATES:** July 26, 1991.

**TYPE OF MEETING:** Business.

**ADDRESSES:** Town of Tusten Hall, Bridge Street, Narrowsburg, New York.

Press Releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers: The Sullivan County Democrat, The Times Herald Record, The River Reporter, The Tri-state Gazette, The Pike County Dispatch, The Wayne Independent, The Hawley News Eagle, The Weekly Almanac. Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL and WVOS.

**FOR FURTHER INFORMATION CONTACT:** John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764-0159; 717-729-8251.

**SUPPLEMENTARY INFORMATION:** The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Public Law 95-625, 16 U.S.C. s1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, New York 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

**Charles P. Clapper, Jr.,**

*Acting Regional Director, Mid-Atlantic Region.*

[FR Doc. 91-16055 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-70-M

## National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 26, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 23, 1991.

**Carol D. Shull,**

*Chief of Registration, National Register.*

### CALIFORNIA

**San Diego County**

*Bingham, Samuel, House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 6427 La Plateada, Rancho Santa Fe. 91000942

*Carmichael, Norman and Florence B., House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 6855 La Valle Plateada, Rancho Santa Fe, 91000941

*Christiancy, George A. C., House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 17078 El Mirador, Rancho Santa Fe, 91000943

*Clotfelter, Reginald M. and Constance, Row House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 6112 Paseo Delicias, Rancho Santa Fe, 91000939

*Rancho Santa Fe Land and Improvement Company Office, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 16915 Avenida de Acacias, Rancho Santa Fe, 91000940

*Rice, Lilian Jenette, House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 16780 La Gracia, Rancho Santa Fe, 91000946

*Shaffer, Charles A., House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 5610 La Crescenta, Rancho Santa Fe, 91000944

*Terwilliger, Claude and Florence, House, (Lilian Rice Designed Buildings in Rancho Santa Fe MPS),* 5880 San Elijo, Rancho Santa Fe, 91000945

**San Mateo County**

*Hofmann, Arthur and Mona, House,* 1048 La Cuesta Rd., Hillsborough, 91000926

**Tulare County**

*Pogue Hotel,* 32792 Sierra Dr. (CA 198), Lemoncove, 91000927

### CONNECTICUT

**Litchfield County**

*Colebrook Center Historic District,* Roughly, jct. of Rockwell, Colebrook, Schoolhouse and Smith Hill Rds. and CT 183, Colebrook, 91000953

**New Haven County**

*Dudleytown Historic District,* Roughly, Clapboard Hill Rd. from Tanner Marsh Rd. to Murray Ln., East River Rd. SE to Trailwood Dr., and Duck Hole Rd., Guilford, 91000951

**New London County**

*Bozrah Congregational Church and Parsonage,* 17 and 23 Bozrah St., 91000952

**Tolland County**

*White's Tavern,* 131 US 6, Andover, 91000947

**Windham County**

*Central Village Historic District,* Roughly, School, Main and Water Sts., and Putnam Rd. N to Plainfield High School, Plainfield, 91000949

### FLORIDA

**Santa Rosa County**

*Bethune Blackwater Schooner,* Address Restricted, Milton vicinity, 91000948

### KENTUCKY

**Butler County**

*Carson, John, House,* 205 S. Main St., Morgantown, 91000922

**Jefferson County**

*Marmaduke Building, (Louisville and Jefferson County MRA),* 520 S. Fourth Ave., Louisville, 91000921.

**Ohio County**

*Louisville, Henderson, and St. Louis Railroad Depot*, SE side Walnut St., 200' N of jct. with KY 54, Fordsville, 91000923

**Webster County**

*Webster County Courthouse*, Courthouse Square, Dixon, 91000924

MASSACHUSETTS

**Suffolk County**

*Roslindale Congressional Church*, 25 Cummins Hwy., at jct. with Summer Ave., Roslindale, 91000925

MISSISSIPPI

**Tishomingo County**

*Church of Our Savior, (Iuka MPS)*, E. Eastport St. between Main and Fulton Sts., Iuka, 91000929

*Coman, J. M., House, (Iuka MPS)*, 202 E. Quitman St., Iuka, 91000930

*Davis, James S., House, (Iuka MPS)*, 102 E. Meigg St., Iuka, 91000931

*Doan, James H., House, (Iuka MPS)*, 203 W. Quitman St., Iuka, 91000932

*Edwards, R. D., House, (Iuka MPS)*, 603 Indian Creek Rd., Iuka, 91000933

*Hammerly, G. P., House, (Iuka MPS)*, 102 E. Quitman St., Iuka, 91000934

*Jourdan, J. C., House, (Iuka MPS)*, 305 W. Eastport St., Iuka, 91000935

*Merrill—Newhardt House, (Iuka MPS)*, 508 W. Quitman St., Iuka, 91000936

*Reid House, (Iuka MPS)*, 702 W. Eastport St., Iuka, 91000937

*Stone—Reid House, (Iuka MPS)*, 503 W. Eastport St., Iuka, 91000938

NEW JERSEY

**Passaic County**

*Botany Worsted Mills Historic District*, 80—82 and 90 Dayton Ave. and 6—32 Mattimore St., Passaic, 91000928

NEW YORK

**Rockland County**

*Kings Daughters Public Library*, Jct. of Main and Allison Sts., Haverstraw, 91000950

OREGON

**Multnomah County**

*Burrell, Walter F., House (Boundary Increase)*, 2610 SE. Hawthrone Blvd., Portland, 91000975

[FR Doc. 91-16151 Filed 7-5-91; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 91-37; Exemption Application No. D-8094]**

## Grant of Individual Exemptions; American Information Technologies Corp.; Chicago, IL

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemptions were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### American Information Technologies Corporation Located in Chicago, Illinois

[Pohibited Transaction Exemption 91-37; Exemption Application No. D-8094]

### Exemption

*(a) General Exemption*

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, or sale of real property or personal property appurtenant thereto (including the acquisition, ownership, or sale of any interest in a joint venture or partnership which invests primarily in real property) or the borrowing or lending of money in connection therewith, between a party in interest and the Ameritech Pension Trust (the Trust) which holds assets of the Ameritech Pension Plan and the Ameritech Management Pension Plan (collectively, the Plans), provided that the following conditions are satisfied:

(1) the decision to invest the assets of the Trust, directly or indirectly, in such transactions is made by American Information Technologies Corporation (Ameritech), the Asset Management Committee, or certain designated members of the Asset Management Committee, as fiduciaries of the Trust;

(2) Any such party in interest is not—

(i) Ameritech, the Asset Management Committee, or any member of the Asset Management Committee;

(ii) Any person directly or indirectly controlling, controlled by, or under common control with Ameritech (a Controlled Person);

(iii) Any officer, director, or highly-compensated employee (as defined in section 4975(e)(2)(H) of the Code of Ameritech or of any Controlled Person;

(iv) Any corporation, partnership, trust, or unincorporated enterprise in which Ameritech, any Controlled Person, or any officer, director, or highly compensated employee (as defined above) of Ameritech or of any Controlled Person owns a 5% or more (directly or indirectly in capital or profits) interest;

(v) Any corporation partnership, trust, or unincorporated enterprise which owns a 5% or more interest in Ameritech, or in a Controlled Person; and

(iv) Any peson who exercises discretionary authority, responsibility, or control, or who provides invesment advice (within the meaning of 29 CFR

2510.3-21)c)) with respect to the investment of assets of the Trust involved in the particular transaction;

(3) For purposes of section (a)(2):

(i) The term "interest," means with respect to ownership of an entity—

(a) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(b) The capital interest or the profits interest of the entity if the entity is a partnership, or

(c) the beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(ii) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(a) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(b) To dispose of or to direct the disposition of such interest;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Ameritech, the Asset Management Committee, or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's length transactions between unrelated parties;

(5) Ameritech or the Asset Management Committee shall maintain for a period of six (6) years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (6) of this section (a) to determine whether the conditions of this exemption have been met, except that

(i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Ameritech and the Asset Management Committee, the records are lost or destroyed prior to the end of the six (6) year period, and

(ii) no party in interest other than Ameritech and the Asset Management Committee shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (6) below; and

(6) (i) Except as provided in subdivision (ii) of this subparagraph (6) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (5) of this section (a) are unconditionally available at the headquarters of Ameritech for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plans which are funded, in whole or part, by the Trust with respect to which Ameritech is a named fiduciary or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans which are funded, in whole or in part, by the Trust or any duly authorized representative of such participant or beneficiary;

(ii) None of the persons described in subdivisions (i) (B) and (C) of this subparagraph (6) shall be authorized to examine the trade secrets or commercial or financial information which is privileged, confidential, or of a proprietary nature of either Ameritech or the Asset Management Committee.

(b) Specific Exemption Involving Places of Public Accommodation.

The restrictions of sections 406(a)(1)(A) through (D) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services, facilities, and/or any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if:

(1) The service, facilities, or incidental goods are furnished on a comparable basis to the general public; and

(2) The requirements of subparagraphs (a)(5) and (6) of this exemption are met.

(c) Specific Exemption Involving Telephone or Other Telecommunication Services.

The restrictions of sections 406(a)(1)(A) through (D) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of telephone or other telecommunications services, facilities, equipment, and/or any goods incidental thereto to any real property which is or may be considered an asset of the Trust by Ameritech or any Controlled Person, provided that the following conditions are satisfied:

(1) the services, facilities, equipment, or incidental goods are furnished to common or public areas, including but not limited to lobby or garage telephones, pay telephones, and telephones for the on-site manager's offices of such real property;

(2) the amount involved in the furnishing of services, facilities, equipment, or incidental goods in any calendar year does not exceed .01 percent (.01%) of the fair market value of the assets of the Trust;

(3) the services, facilities, equipment, incidental goods are furnished on a comparable basis with terms provided in the ordinary course of business by Ameritech to the general public; and

(4) the requirements of subparagraphs (a)(5) and (a)(6) are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on June 25, 1990, at 55 FR 25906.

**Procedural Notice to Interested Persons and Comments**

Ameritech represented to the Department that it had notified by July 10, 1990, all interested persons of the notice published on June 25, 1990. In the notice, the Department invited all interested persons to submit written comments and any requests for a hearing on the proposed exemption within forty-five (45) days of the date of publication of the notice in the **Federal Register**. All comments and requests for hearing were due by August 9, 1990.

Prior to August 9, 1990, however, a number of interested persons contacted the Department to note certain procedural defects and irregularities in the manner in which notice to interested persons was provided by Ameritech. In light of these defects and irregularities, the Department determined to extend the comment period on the proposed exemption until October 12, 1990, and required Ameritech to re-notify certain participants and beneficiaries. In a letter dated September 17, 1990, Ameritech notified the Department that it had provided re-notification to interested persons as required by the Department.

As of the close of the comment period on October 12, 1990, the department had received 297 letters and 1,089 telephone inquiries from interested persons commenting on the proposed exemption. Of the 297 commentators who submitted written comments, nineteen (19) requested that the Department hold a hearing. Many of the telephone calls and written comments involved requests for assistance from the Department in explaining the terms and conditions of the exemption. Several of the commentators supported adoption of the exemption. Other commentators

opposed the exemption but did not set forth the reasons for their views. However, other commentators did provide reasons for their opposition. The specific concerns expressed by these commentators, among other things, related to: (a) The risk of investing the Trust in real estate; (b) the percentage of the assets of the Trust invested in real estate; and (c) the adequacy of the safeguards of the proposed exemption which is intended to protect the Plans' interests.

With respect to the written comments submitted by interested persons, the Department forwarded Ameritech copies of all of the comment letters and requested that Ameritech respond in writing.

Regarding the objection by commentators to the Plans' investing in real estate, Ameritech responded by stating that the Act expressly requires diversification of plan assets so as to minimize the risk of large losses. Also, each property to be acquired by the Trust is submitted to the extensive review process outlined in the request in order to determine its suitability for acquisition. This review includes physical inspections and appraisals of the property under consideration, analysis of major existing and potential tenants and applicable real estate market conditions, and evaluation of such factors as size, location, actual and potential use, cash flow (historical and projected), financing, taxes, insurance, title requirements, and compliance with zoning, environmental, and other applicable laws. In short, the Trust has established rigorous standards and procedures to evaluate the soundness of its real estate investments.

Ameritech noted that one of the main purposes of the proposed exemption is to increase real estate returns by reducing administrative costs and by offering the Trust a greater number of parties with whom it, as owner of the real estate, may potentially transact business. Ameritech believes that the proposed exemption would alleviate the increasing difficulty of finding new real estate investments suitable for the Trust which do not involve the Trust assets in party in interest transactions. Further, as the Trust assets grow, Ameritech maintains that, without an exemption, it becomes harder to avoid prohibited dealings with parties in interest with respect to the existing real estate holdings of the Trust.[1]

In response to the comments concerning the percentage of assets of the Trust invested in real estate, Ameritech states that of the Trust's $10.5 billion in assets as of December 31, 1988, only $962 million, or 9.13%, was invested in real estate, and it is anticipated that no more than 15% will be invested in real estate at any time. Ameritech represents that the proposed exemption, if granted, is intended to facilitate, rather than to increase, the Trust's real estate investments. Ameritech further notes that the proposed exemption, if granted, would improve the diversification of the assets of the Trust, and thus, the stability of the Trust's real estate investments.

With respect to other safeguards needed to protect the Plans, several commentators suggested imposing a cap on or otherwise limiting the amount of the Trust's assets that could be invested in real estate. Ameritech responds that the Investment Policy Committee is in the best position to determine the appropriate mix of investments given the current and changing market conditions. The applicant also represented that the vast majority of the Trust's assets are invested in stocks, fixed income securities, and other marketable securities. While experts may disagree as to the appropriate mix of stocks, bonds, real estate, and other types of investments, the Investment Policy Committee, pursuant to authority delegated by Ameritech under the terms of the Plans, has determined that the Trust's level of investment in real estate is appropriate and in the best interest of the Plans' participants and beneficiaries. Ameritech points out that in addition to the benefits derived from diversifying the Trust's assets by investing in real estate, real estate investments can be extremely safe and lucrative, depending upon the individual properties acquired.[2]

In addition to the above comments and requests for a hearing received from interested persons, Ameritech informed the Department, in a submission dated August 9, 1990, of certain factual changes and technical clarifications to the information contained in the application file and pointed out a number of technical corrections to the notice. The following represents a summary of the comments submitted to the Department by Ameritech subsequent to the publication of the notice:

(1) The language of paragraph 4 of the Summary of Facts and Representations of the Notice indicates that the Trust "proposes" to invest in real property. Ameritech notes that the Trust currently holds investments in real property and proposes to acquire further investments;

(2) Ameritech disclosed that the Trust: (i) Has committed $100 million to be invested in real estate at the direction of outside investment managers who are qualified professional asset managers (QPAMs)[3] with respect to the Trust, (ii) has made several other investments, individually or through pooled investment vehicles that generally are either real estate operating companies or are managed by QPAMs, and (iii) has made investments for which Ameritech, the Asset Management Committee, or designated members of the Asset Management Committee retain authority over acquisitions but not over dispositions. The applicant informed the Department that the above facts deviated from earlier representations in the application file, and that Ameritech wished to clarify its understanding that the exemption would not be available for real estate investments acquired at the direction of outside investment managers. In this regard, however, Ameritech wished further to clarify that in the case of an investment in a pooled real estate investment vehicle, if Ameritech or the Asset Management Committee retains the authority with respect to acquisition of the Trust's interest or investment in the underlying real property assets, then the Trust's investment in the pooled investment vehicle and the vehicle's investment in the underlying real property assets would be subject to the general exemption. The Department concurs with this comment. However, the Department notes that the exemption would not be available for transactions occurring subsequent to the acquisition of real property which are entered into at the direction of an outside investment manager.

(3) Ameritech further pointed out that section (a)(2) of the proposed exemption is designed to identify parties in interest that are ineligible for relief under the exemption. However, Ameritech noted subsections (vii) and (viii) of section (a)(2) do not specify additional classes

[1] In this regard, the Department notes that the absence of an administrative exemption would not prevent the Trust from investing in real estate as part of its investment portfolio provided that the transactions do not otherwise involve parties in interest.

[2] The Department notes that the investment by fiduciaries of the Trust in real estate related investments are governed by the prudence and diversification requirements of section 404 of the Act. No exemption from section 404 is granted by this exemption, and the Department expresses no opinion by the granting of this exemption as to whether any of the relevant provisions of section 404 have been violated by the Trust's investments in real estate.

[3] In this regard, see Prohibited Transaction Class Exemption 84-14 (granted 50 FR 41430, October 10, 1985; proposed 49 FR 9494, March 13, 1984).

of parties who are ineligible for the general exemption but merely define terms used therein. The Department concurs with this comment and has reordered the definitions accordingly.

(4) Ameritech noted that paragraph 8(d) of the Summary of Facts and Representations, did not include the language, underscored below, which is set forth at paragraph (a)(2)(vi) of the proposed exemption which states that the general exemption would not involve "(a)ny person who exercises discretionary authority, responsibility, or control, or who provides investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the investment of Trust assets involved in the particular transaction." The Department concurs with Ameritech's comment that paragraph (8)(d) should have included the language underscored above.

(5) Paragraph 3 of the Summary of Facts and Representations indicated that an interim trust (the Interim Trust) was replaced by the Trust pursuant to a trust agreement dated December 24, 1984. Ameritech's comment of August 9, 1990, clarified that the current Trust agreement was actually executed as of December 28, 1984, and was made retroactive to September 1, 1984. Ameritech also stated that the Interim Trust was in existence from January 1, 1984, until its assets were transferred to the Trust. Thus, because relief in section (a) of the proposed exemption was to be retroactive to January 1, 1984, for transactions involving the Trust, Ameritech requested clarification that references to the Ameritech Pension Trust or "the Trust" in the notice also included the Interim Trust.

Subsequent to this comment, Ameritech, by letter dated December 19, 1990, informed the Department that through an internal audit and investigation, it had become aware of possible violations of its policy regarding conflicts of interest by Mr. Lloyd Thompson (Mr. Thompson), a former member of Ameritech's investment management staff. These alleged conflicts relate to certain investment decisions which were made on behalf of the Trust during the eighteen months prior to the resignation of Mr. Thompson from Ameritech's employment in September 1990. Ameritech has disclosed the situation to the appropriate federal authorities who are currently conducting an investigation with the full cooperation of Ameritech. Also, Ameritech has retained a nationally recognized real estate investment firm to review and analyze the transactions in question and to recommend, from a financial standpoint, the appropriate future course of action with respect to these investments. In addition, this advisor will assist Ameritech's investment management staff on an ongoing basis with respect to real estate investments in general until Ameritech is able to retain suitable replacement personnel in house.

With respect to this matter, Ameritech, on December 21, 1990, filed an action in federal court against Mr. Thompson to recover: (a) Payments made to Mr. Thompson by a third party who did business with the Trust, (b) economic losses, if any, to the Trust, and (c) the costs of litigation and related investigations, including attorneys' fees. Ameritech represents that a settlement agreement was entered into, effective March 29, 1991, between Ameritech and Mr. Thompson and a Stipulation of Dismissal of the litigation was filed with the court. Under the terms of the settlement agreement certain amounts were allocated to the Trust and certain amounts were allocated to Ameritech. Amounts allocated to Ameritech represented reimbursement of the cost of the investigations related to Mr. Thompson's activities, including attorney's fees, and a portion of Mr. Thompson's salary involving the litigated matter which did not relate to his employment with the Trust. These amounts were originally paid by Ameritech. All other claims which Ameritech or the Trust may have against Mr. Thompson will survive the settlement agreement should any additional losses be identified or any economic losses arise from the transactions which were the subject of the lawsuit.

Although Ameritech represents that the situation is now well under control, it believes it inappropriate at this time to seek an exemption covering transactions consummated during Mr. Thompson's tenure. Accordingly, Ameritech has determined not to seek an exemption covering transactions consummated prior to the grant of this exemption, and has withdrawn its request for retroactive relief with respect to the general exemption. With regard to prospective relief, Ameritech believes detection of future such occurrences is extremely likely as a result of its enhanced periodic and annual internal auditing system and pre-hiring scrutiny.

In light of the above, the Department has determined to revise the final exemption to provide prospective relief only with regard to the general exemption.[4]

After giving full consideration to the entire record, including written comments and all other inquiries submitted by interested persons, the Department has decided to grant the proposed exemption, as modified above. In this regard, the Department has determined that the factual issues identified by the commentators, including those who have requested a hearing, have been adequately dealt with by the submission of the written responses by Ameritech.

All comments submitted to the Department by Ameritech and all other commentators are included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, room N-5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For Further Information Contact: Angelena C. Le Blanc of the Department telephone (202) 523-8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or

[4] As a result, the Department herein is not providing relief herein for any transactions which may have occurred between the Trust and any party in interest prior to the effective date of this exemption.

administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of July 1991.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 91-16171 Filed 7-5-591; 8:45 am]

BILLING CODE 4510-29-M

---

**[Application No. D-8639, et al.]**

## Proposed Exemptions; Givens Profit Sharing Plan and Trust, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each notice of proposed exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Givens Profit Sharing Plan and Trust (the Plan) Located in Chesapeake, Virginia

[Application No. D-8639]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of 92 units (the Units) of Southeastern Income Properties (the Partnership), a Virginia limited partnership, by the Plan to Givens, Incorporated (the Buyer) for $36,800.00 provided: (1) The sale price is not less than the fair market value of the Units at the time of the sale, and (2) the Buyer pays all costs of the sale plus the amount of the Plan's share in any increase in the capital account of the Partnership such that no economic loss is incurred by the Plan on the sale.

### Summary of Facts and Representations

1. The Plan covers employees of the Buyer and of Givens Trucking Company, Inc. (the Affiliate)—83 participants as of December 5, 1990. The Plan is the successor, by merger effective January 1, 1990, to the Affiliate's Profit Sharing Plan and the Buyer's Profit Sharing Plan (collectively, the Prior Plans). As of January 1, 1990, the Plan's assets (including the Units) totalled $164,720.97. The Plan trustee is Edward J. Reed, who is also a participant in the Plan, an officer and director of both the Buyer and the Affiliate (collectively, the Employers), and the husband of Janice G. Reed, one of the two sole owners of the Employers (whose other owner is Jeri G. Long). The Employers wish to merge the Plan with a 401(k) profit sharing plan they maintain for the same employees. However, in order to accomplish the merger, the Units must be sold because the trustee of the 401(k) plan (offered through a family of mutual funds) will accept only cash in a merger.

2. The Units were acquired by the Prior Plans in 1987 through an offering by Wheat, First Securities, Inc. (the Agent) for $500 per unit (i.e., total original investment of $46,000.00). The Agent acts as sales agent for the Partnership and has merely a brokerage relationship (and no other relationship) to the Employers, Edward J. Reed, Janice G. Reed, or Jeri G. Long. The Agent derives far less than 1% of its income from the Plan and these parties, who also purchase and sell securities through other brokers.

3. The Plan has a .208518% interest in the capital of the Partnership and a slightly smaller interest in the Partnership profits. Apart from the purchase price of the Units, the Plan and the Prior Plans made no other expenditures with respect to the Units. The underlying assets of the Partnership are apartment complexes in Virginia, North Carolina, and South Carolina. As

the result of a refinancing of the apartments, closed prior to the downturn in the financial and mortgage markets, the Partnership was able to distribute $100 per unit to its investors in 1990. Thus, the Plan received a $9,200,000 return of capital in 1990. The applicant states that following the cash distribution, the market price of the Partnership units declined from $500 per unit to $400 per unit.

4. Until the third quarter of 1990, it was the policy of the portfolio managers of the Partnership to distribute an 8% annualized return to the limited partners in the form of quarterly cash distributions. The applicant was advised, by letter dated October 22, 1990, from the general partner of the Partnership that due to then current economic conditions, the cash distribution would not be made for the third quarter of 1990; the letter did not indicate when, or if, cash distributions would be resumed.

5. By letter dated November 27, 1990, John Timothy Coffey (Mr. Coffey), a broker employed by the Agent, advised that:

(a) The then current market price of the Partnership units was $400.00 per unit; (b) each sale of Partnership units is subject to a 5% commission paid by the seller and a $50.00 per transaction transfer fee paid to the Partnership; (c) there have been no sales of Partnership units since June 1990, due to market conditions and the suspension of distributions pursuant to the general partner's letter, so there is currently no secondary market in the Partnership units; (d) Partnership units are generally sold on a first-in first-out basis (i.e., in the order they are offered for sale unless a private sale for specific units can be found), and approximately 600 Partnership units are currently offered for sale; (e) it is unlikely that all 92 Units would sell in a single transaction—more likely, several different sales over a period of a year, or at least several months, would be required to dispose of all 92 Units.

By letter dated June 12, 1991, Mr. Coffey provided an update on the price of the Partnership units as follows: the most recent sale of the Partnership units occurred on April 10, 1991, when 10 units were sold at $299 each; prior to that date, previous trades occurred in June 1990 at $400 per unit.

6. The applicant states that due to an oversight, the Units have not been re-registered in the ownership of the Plan; hence two transfer fees would be incurred in a single sale transaction. If the Plan were able to sell its Units on the market in a single sale, the Plan would receive $34,860, according to the applicant, calculated as follows: 92 Units @ $400=$36,800−5% commission $1,840)−transfer fees ($100) = net proceeds of $34,860. If the Plan could sell its Units on the market only in several different sales, every sale would generate its own transfer fee, thereby increasing the Plan's cost of selling the Units.

7. The Plan wishes to sell the Units to the Buyer for a cash price equal to the greater of (a) the market price per unit at the time of the proposed sale, or (b) the November 1990 market price of $400 per unit. The Plan's unrecovered cost also equals $400 per Unit, or $36,800 for all 92 Units—i.e., original cost of $500 per Unit (see item 2, above) less $100 pet Unit returned to the Plan in 1990 (see item 3, above). In addition, if the Plan's cost for the Units, as adjusted for capital account increases, is more than $36,800, the Buyer will also pay the Plan the increase in the capital account such that the Plan will suffer no economic loss on the sale. The fair market value of the Units will be determined at the time of the proposed sale by the Agent after inquiry of, among others, the Partnership's general partner to determine recent sales of the units.

8. The applicant represents that if there were a difference between the proposed sale price and the fair market value of the Units, and if that difference were deemed an employer contribution to the Plan, the limitation provided under section 415(c) of the Code would not be exceeded for the year in which the proposed sale occurs. If the proposed exemption is granted, the proposed sale will take place immediately following the grant of the exemption. The Buyer will pay the Plan the sales price for the units in a cash lump sum on the day of the sale. The proposed sale will be consummated by executing the transfer documents required by the Agent and the general partner of the Partnership. Because the sale would be an assignment to a related party, there would be no commission payable on the sale. The Buyer will pay all transfer fees and other costs associated with the transfer including all costs associated with the exemption application. Thus, the Plan would net at least $36,800 on the sale of all 92 Units—at least $1,940 more than the net proceeds the Plan could obtain from a one-time sale of the Units on the open market (see item 6, above).

9. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) In exchange for the Units, the Plan will receive the greater of its unrecovered cost for the Units ($36,800) or their fair market value at the time of the sale; in addition, if the Plan's cost for the Units, as adjusted for capital account increases, is more than $36,800, the Buyer will also pay the Plan the increase in the capital account such that the Plan will suffer no economic loss on the sale;

(c) The price the Plan will receive for the Units, $400 per Unit, is in excess of the most recent sales price of $299 per unit, paid when ten Partnership units were sold on April 10, 1991;

(d) The fair market value of the Units at the time of the sale will be determined by the Agent, an unrelated party, after inquiry of, among others, the Partnership's general partner, another unrelated party, to determine recent sales of the units;

(e) There will be no commission payable on the sale, and the Buyer will pay all transfer fees and other costs associated with the transfer, including all costs associated with the exemption application; and

(f) The sale will enable the Plan to dispose immediately, in a single transaction, of an asset which has produced no income since mid-1990 and for which there is, at best, a slow market and to reinvest the sale proceeds in liquid investments paying current income.

**Tax Consequences of Transaction**

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404, and 415.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Riebe's Automotive Supply, Inc. Profit Sharing Plan (the Plan) Located in Grass Valley, California**

Application No. D-8655

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in 29 CFR part 2570 subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) by the Plan to Riebe's Automotive Supply, Inc. (the Employer), the sponsor of the Plan and a party in interest with respect to the Plan, for the greater of either (1) $67,000, or (2) the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

**Summary of Facts and Repesentations**

1. The Employer, Riebe's Automotive Supply, Inc., sells automotive parts and accessories as a wholesaler and retailer, and operates a machine shop for producing and repairing automotive parts. The Employer was established in 1957 and incorporated in September 1970. There are currently two locations for the Employer. One location is at 129 Idaho-Maryland Road in Grass Valley, California, which is directly across the road from the Property, and another located in Citrus Heights, a suburb of Sacramento, California. Mr. Dell Riebe and his wife, Mrs. Mary A. Riebe, own 64 percent of the issued shares of the Employer as their community property. Both Mr. and Mrs. Riebe are employees of the Employer and participants and fiduciaries of the Plan. Their son, Mr. Barton W. Riebe, owns the remaining 36 percent of the issued shares of the Employer. He is also an employee of the Employer and a participant in the Plan.

2. The Plan is a profit sharing plan with 21 participants and with total assets of $84,655.47, as of December 31, 1990. The Employer established the Plan on January 1, 1977, and, because of steadily increasing costs of administering and funding the Plan, terminated it on June 30, 1989. The assets of the Plan consist of the Property and money instruments. Over the years the value of the Property has appreciated significantly when compared to other assets of the Plan. When purchased on March 31, 1978, for $26,000, the Property represented 60 percent of the total assets of the Plan. Now the Property represents about 77.7 percent of the total assets, leaving the Plan with a liquidity problem when making distribution of its assets to participants.

3. The applicant represents the Property to be a small parcel, measuring approximately 40 feet in width at the end adjacent to the roadway and 37 feet in width at the rear of the parcel, and measuring in length approximately 85 feet. There is a house (with no garage) located on the Property, which is approximately 50 years old, containing two bedrooms and one bathroom, and with total dimensions of 720 square feet. The Property was purchased for rental income and capital appreciation. During the calendar year 1990, the Plan received rental income of $4,000 from the Property and incurred maintenance expenses of $671.70. Currently the Property is being rented for $350 per month. The Property is, and has always been rented to unrelated parties. The location of the Property is 132 Idaho-Maryland Road, Grass Valley, California, which is in an area that has been converted from residential to commercial zoning.

4. An analysis of the marketability of the Property was made by an independent real estate broker, Mr. Jay Egan of Grass Roots Realty (an independently owned and operated member of Coldwell Bank Residential Affiliates, Inc.), Grass Valley, California. Mr. Egan represents in a letter dated April 25, 1991, that the condition of the house is poor. He found the highest and best use of the Property is for commercial purposes. However, he represented that such use is severely limited because of the very small lot size and the cost to demolish the existing structure on the Property. Mr. Egan determined that the most likely potential for the Property is for it to be merged with adjacent commerical properties, and that such redevelopment of a commercial nature will take many years. He concludes that under most favorable conditions the sale of the Property would take one or two years. Mr. Egan also stated that currently the market for commercial real estate is sluggish in the area where the Property is located.

An appraisal of the Property has been made by Mr. Richard P. Esterly, an independent realtor and appraiser of Grass Valley, California. He determined the fair market value of the Property was $67,000, as of November 20, 1990. An additional appraisal by Mr. Esterly, dated May 14, 1991, determined that the fair market value has declined to $58,000. In relation to the adjacent property owned by the Employer, Mr. Esterly gives an opinion that the value of the Property to the Employer would be increased by $5,000 because of its location, giving the Property a value to the Employer of $63,000.

5. In order to fulfill its obligation to distribute the Plan assets as soon as administratively feasible, the applicant requests an exemption from the prohibited transaction provisions of the Act to allow it to purchase the Property for cash at the greater of either $67,000, or the fair market value of the Property (including any premium attributable because of the Employer's ownership of adjacent property), as determined by a qualified, independent appraiser on the date of the Sale. No expenses will be incurred or commissions paid by the Plan with respect to the Sale and a timely final distribution of Plan assets will be made to participants.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because (a) the Sale of the Property will be a one-time transaction for cash; (b) the Plan will not be required to incur any expense for the Sale; (c) the Plan will sell the Property to the Employer for the greater of either the sum of $67,000 or the fair market value of the Property as determined by an independent, qualified appraiser on the date of the Sale including any premium attributable because of the Employer's ownership of adjacent property; and (d) the Sale will facilitate the distribution of the assets of the terminated Plan to its participants.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Texapol Corporation Employees' Profit Sharing Plan (the Plan) Located in Bethlehem, Pennsylvania**

[Application No. D-8631]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to Texapol Corporation (the Employer), a party in interest with respect to the Plan, of the Plan's interest (the Interest) in Realmark Investors Limited Partnership VI-A (the Partnership), a real estate limited partnership, provided the sale price is not less than the greater of (a) the fair market value of the Interest as of the proposed sale date, or (b) the Plan's aggregate cost of acquiring and holding the Interest.

**Summary of Facts and Representations**

1. Contributions to the Plan terminated effective December 31, 1990, and all Plan assets except the Interest have been liquidated in anticipation of distributing all Plan assets to the Plan's approximately 65 participants or their beneficiaries. The approximate fair market value of the Plan's assets totalled $257,152 as of September 30, 1990. The Plan's trustees, who have sole discretion over the Interest, are Robert B. Huey, an employee and the president of the Employer, and Alice K. Huey. The Employer is the Plan Administrator.

2. The Interest consists of 150 units in the Partnership, representing approximately 5.8% of the Plan's assets. The Plan purchased the Interest for $15,000 ($100 per unit) on February 17, 1988. The Plan acquired the Interest directly from the Partnership, which, according to the Plan trustee, was not a party in interest with respect to the Plan. The reason the Plan acquired the Interest was that the Plan trustees perceived it as a good long-term investment. At the time of the purchase, there was no intention or contemplation that the Plan would be terminated or that any other event would occur requiring liquidation of the Interest in the short term. The Plan trustee states that the Plan has incurred no expenditures and no operating losses or gains while the plan has held the Interest.

3. The prospectus for units of the Partnership characterizes these units as an illiquid investment and cautions that, since the transfer of the units is subject to certain limitations, including the required consent of the general partners of the Partnership, it is anticipated that no public market for the Partnership units will develop and that transfers of the Partnership units will not be frequent. Nevertheless, the Plan has made numerous unsuccessful attempts to sell the Interest and has received expressions of interest from unrelated secondary market makers only at substantially reduced prices: 35–40¢ on the dollar (i.e., $35–40 for each $100 unit) from two secondary market makers on November 21, 1990, $5,150 for the entire Interest on November 28, 1990 (i.e., $36 per unit less a transfer fee of $250), and $34.80 per unit ($5,220.00 total) on December 13, 1990.

4. The Plan trustees wish to liquidate the Interest in order to distribute all Plan assets to participants and beneficiaries, thereby enabling them to be eligible to roll over their lump-sum distributions of their entire interests in the Plan. The Plan trustees also do not wish to defer final termination of the Plan until a market develops for the Interest. Therefore, the Plan trustees wish to sell the Interest to the Employer for the greater of (a) $15,000 (the amount of the Plan's aggregate cost of acquiring and holding the Interest), or (b) the fair market value of the Interest on the date of the sale, as determined by Mr. Michael A. Wolfer, of Legg, Mason, Wood, Walker, Inc., Allentown, Pennsylvania. Mr. Wolfer is an associate vice president and broker with Legg, Mason, Wood, Walker, Inc., and has been employed by that firm for ten years. He has been actively dealing in limited partnership interests for at least five years. It is represented that Mr. Wolfer is independent of the Employer and the Plan and is not related to them, to any principals of the Employer, or to any party in interest with respect to the Plan. If the proposed exemption is granted, the Plan trustees will appoint Mr. Wolfer to determine (i) whether the fair market value of the Interest as of the date of the proposed sale is less than or greater than $15,000, and (ii) the Interest's actual fair market value if greater than $15,000 as of that date.

5. Based on the limited purchase offers they have received (see paragraph 3, above), the Plan Trustees believe that $15,000 represents no less than the fair market value of the Interest. It is represented that the limitations provided under section 415(c) of the Code will not be exceeded for the year in which the proposed sale occurs if the difference between the proposed sale price and the fair market value of the Interest is deemed an employer contribution to the Plan. The Employer will pay the entire purchase price in cash on the date of the proposed sale. The Employer will also pay the cost of the exemption application and of notifying interested persons of the proposed exemption.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed sale will permit the Plan, which is terminating, to sell an illiquid asset and to fully distribute all of its assets to the Plan participants and beneficiaries; (b) the transaction will be a one-time cash transaction; (c) the sale price will be the greater of (i) the fair market value of the Interest on the date of the sale, as determined by Mr. Michael A. Wolfer, a qualified expert who is not related to the Employer, or (ii) the Plan's aggregate cost of acquiring and holding the Interest (i.e., $15,000); (d) the Plan will pay no expenses relating to the proposed sale or the exemption application.

**Tax Consequences of Transaction**

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404, and 415.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Club Corporation of America Employees' Savings and CCA Investment Plan (the Plan) Located in Dallas, Texas**

[Exemption Application No. D–8740]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to an interest-free extension of credit (the Advances) to the Plan by FCC, Inc. (FCC), a party in interest with respect to the Plan, provided that: (a) No interest and/or expenses are paid by the Plan; (b) the proceeds of the Advances are used only to honor participant directions for transfers and withdrawals out of the Interest Income Fund in the Plan; (c) repayment of the Advances will be restricted to the cash proceeds obtained by the Plan from Executive Life and/or the Guaranty Fund; and (d) repayment of the Advances will be waived with respect to the amount by which the Advances exceed the amount the Plan receives from the disposition of the GIC.

*Effective Date:* This exemption, if granted, will be effective as of July 8, 1991.

**Summary of Facts and Representations**

1. The Plan is a defined contribution pension plan with 2,740 participants and total assets of $9,676,115 as of March 31, 1991. The Plan participants are employees of Club Corporation of America (CCA) and its affiliates. The

Plan is sponsored by Brookhaven Country club, Inc., a Dallas country club which is wholly owned by CCA. CCA is engaged in the operation of private dining, athletic and country clubs through various affiliates, and is a wholly-owned subsidiary of Club Corporation International, a Nevada Privately-owned corporation. The trustee of the Plan are James E. Maser, Jerry W. Dickinson, Robert H. Johnson and John H. Gray (the Trustees), each of whom is an officer and/or director of CCA. The Plan provides for individual participants accounts. FCC is a wholly-owned subsidiary of CCA engaged in the financing of capital acquisitions, replacements, and improvements for CCA and its affiliates.

2. Each Plan participant's contributions to the Plan are invested as directed by the participant in one of three investment funds within the Plan. Participants have the right to change their investments within and among the funds on January 1 and July 1 of each year (the Option Dates). One of the three investment funds is the Interest Income Fund (the I. Fund), the assets of which are invested primarily in guaranteed investment contracts issued by insurance companies. As of March 31, 1991, the I. Fund, with assets of $3,134,162, comprised 32.4% of the total assets in the Plan. Among the assets in the I. Fund is Guaranteed Investment Contract No. CG01322A3A (the GIC) which the Plan purchased in the principal amount of $1,314,731.60 in May 1989 from the Executive Life Insurance Company of California (Exec. Life), with a maturity date of April 30, 1992.[1] On April 12, 1990, Exec Life was placed into conservatorship by the California Insurance Commissioner and Exec. Life has suspended payments on its guaranteed investment contracts, including the GIC held by the Plan. The Trustees represent that it is uncertain whether or to what extent Exec. Life will eventually be able to make any further payments of interest or principal on the GIC.

3. The Trustees represent that, as a result of the conservatorship of Exec. Life, they expect a substantial number of Plan participants to elect as soon as possible to move their Plan account funds from the I. Fund into one of the other two investments funds in the Plan. In order to accommodate such transfer and withdrawal requests, the Trustees have arranged for FCC to make the Advances to the Plan of sufficient cash funds to finance the investment fund transfer requests and satisfy short-term liquidity requirements. The Trustees are requesting an exemption for the Advances under the terms and conditions described herein.

4. The Trustees state that the Advances represent the most appropriate method for protecting Plan participants from the uncertainties of the Exec. Life situation. Specifically, the Trustees represent at a state guaranty fund the (Garanty Fund) generally covers up to $5 million with respect to a guaranteed investment contract issued to an employee benefit plan. Because it is uncertain whether the Guaranty Fund would continue to cover the GIC after its transfer to a non-plan transferee, the Trustees decided to protect the Plan participants' interests with the Advances, which would not involve a transfer of the GNIC out of the Plan.

5. The Advances will be in the form of a non-interest-bearing line of credit evidenced by a debenture (the Debenture) which provides that the repayment of the Advances is to be limited to the cash proceeds obtained by the Plan from Exec. Life and/or the Guaranty Fund. No Plan assets will be used to repay the Advances and no collateral other than the GIC proceeds will secure the Debenture. To the extent the plan recoups less from the final disposition of the GIC than the total amount of the Advances, repayment will be waived.[2] To the extent the Plan recoups more than the total amount of the advances, such amounts will be retained by the Plan and allocated to the accounts of the Plan participants. The proceeds of the Advances will be used to effect transfers and withdrawals, as directed by Plan participants, of participant funds from the I. Fund. Upon the GIC's maturity on April 30, 1992, if full payment on the GIC has not been made by Exec. Life or the Guaranty Fund as of that date, FCC will advance to the Plan an additional Advance amount representing the difference between the total Advances as of that date and the maturity book value of the GIC, less any partial GIC payments received by the Plan through that date from Exec. Life or the Guaranty Fund. The Trustees represent that the Advances will not result in any expenses or risks to the Plan.

6. The Trustees represent that at the time of their application to the Department for the exemption proposed herein, the Advances constituted proposed transactions. However, the Trustees anticipated substantial transfers and withdrawals of participant accounts out of the I. Fund on the next available Option Date, which was to be July 1, 1991, but was postponed to July 8, 1991. Therefore, in order to honor participant investment fund transfer and withdrawal requests, the Trustees represent that it may have been necessary to undertake some of the Advances prior to the publication of a final exemption. The Trustees request that the exemption, if granted, be effective as of July 8, 1991.

7. In summary, the applicant represents that the subject transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Advances will preserve the Plan's rights with respect to the GIC and the Guaranty Fund while enabling the Trustees to honor participant directions for transfers and withdrawals out of the I. Fund; (2) The Plan will pay no interest, or incur any expenses or risks, with respect to the Advances; (3) Repayment of the advances will be restricted to proceeds from the GIC and no other Plan assets will be involved in the transactions; and (4) Repayment of the Advances will be waived to the extent the Plan recoups less from the disposition of the GIC than the amount of the Advances.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willettt of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

## General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code,

[1] The Department expresses no opinion as to whether the acquisition of the GIC satisfied the fiduciary responsibility standards set forth in part 4 of title I of the Act.

[2] The applicant represents that any waiver of repayment of the Advances will be in compliance with section 415 of the Code.

the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of July, 1991.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 91-16172 Filed 7-5-91; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following three meetings:

*Name:* Special Emphasis Panel in Biological and Critical Systems.

*Date and Time:* July 25-26, 1991; 8:30 a.m. to 5 p.m.

*Place:* Long Beach, CA.

*Type of Meeting:* Closed.

*Contact Person:* Clifford J. Astill, Program Director, Earthquake Hazard Mitigation Program, room 1130, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-9500.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research in Earthquake Hazard Mitigation Program.

*Agenda:* To review and evaluate unsolicited research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c) (4) and (6) the Government in the Sunshine Act.

Dated: July 1, 1991.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 91-16038 Filed 7-5-91; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel for Biotic Systems and Resources; Committee of Visitors; Meetings

The National Science Foundation announces the following two Committee of Visitors meetings:

Committee of Visitors will review the following programs within the Division of Biotic Systems and Resources. All meetings will be held at the National Science Foundation in the rooms listed, from 8:30 a.m. to 5 p.m. All meetings are closed. Contact Persons can be reached at the telephone numbers listed below.

July 22-24, 1991—Systematic Biology Program; room 1243.

*Contact Person:* Dr. Terry L. Yates, Program Director (telephone 202/357-9588).

July 24-26, 1991—Biological Research Resources Program; room 543.

*Contact Person:* Dr. David E. Schindel, Program Director (telephone 202/357-7475).

*Agenda:* To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Reason for Closing:* The meetings are closed to the public because the Committee of Visitors will be reviewing proposal actions that include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: July 1, 1991.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 91-16039 Filed 7-5-91; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Mechanical and Structural Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following three meetings:

*Name:* Special Emphasis Panel in Mechanical and Structural Systems.

*Date and Time:* July 22, 1991; 8:30 a.m. to 5 p.m., room 540B; July 23, 1991; 8:30 a.m. to 5 p.m., room 1133; July 25-26, 1991; 8:30 a.m. to 5 p.m., room 1133.

*Place:* National Science Foundation, 1800 G St. NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Elbert L. Marsh, Program Director, Dynamic Systems and Control Program, room 1108, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-9542.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research in Dynamic Systems and Control Program.

*Agenda:* To review and evaluate unsolicited research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c) (4) and (6) the Government in the Sunshine Act.

Dated: July 1, 1991.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 91-16040 Filed 7-5-91; 8:45 am]

BILLING CODE 7555-01-M

### Ocean Sciences Review Panel; Meeting

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

*Name:* Ocean Sciences Review Panel.

*Dates/Times:* July 30, 31 and August 1, 1991—8:30 a.m. to 5 p.m. each day.

*Place:* St. James Hotel, 950 24th NW., Washington, DC 20037.

*Type of Meeting:* Closed.

*Agenda:* Review and evaluate oceanography research proposals.

*Contact:* Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, room 609, National Science Foundation, Washington, DC 20550 (202-357-9610).

Dated: July 1, 1991.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 91-16041 Filed 7-5-91; 8:45 am]

BILLING CODE 7555-01-M

## Emphasis Panel; Physics Special

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review and evaluate and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and the proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of the U.S.C. 552b(c), Government in the Sunshine Act.

*Name:* Special Emphasis Panel in Physics.
*Date:* July 29–30, 1991.
*Time:* 10:30 a.m.–6 p.m., July 29, 1991; 9 a.m.–2:30 p.m., July 30, 1991.
*Location:* Faculty Lounge, Department of Physics, David Rittenhouse Laboratory, University of Pennsylvania, 209 S. 33rd Street, Philadelphia, PA.
*Type of Meeting:* Closed.
*Agenda:* Review and evaluate a research proposals for the Nuclear Physic Program.
*Contact Person:* Dr. John D. Fox, Program Director, rm. 341, National Science Foundation, Washington, DC 20550.

Dated: July 1, 1991.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 91–16042 Filed 7–5–91; 8:45 am]

BILLING CODE 7555–01–M

# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 33rd meeting on July 25 and 26, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

A. Meet with the NRC Commissioners to discuss items of mutual interest.

B. Discuss a recent trip to and meeting at the Center for Nuclear Waste Regulatory Analyses and prepare a report on activities of the Center.

C. Discuss the use of expert judgment in conducting performance assessments in support of licensing of high-level and low-level waste repositories. Prepare a report for the Commission on the proper role of expert judgment in performance assessment.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: July 2, 1991.

**John C. Hoyle,**

*Advisory Committee Management Office.*

[FR Doc. 91–16124 Filed 7–5–91; 8:45 am]

BILLING CODE 7590–01–M

## NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG–1435, Volume 3, Status of Safety Issues at Licensed Power Plants, Generic Safety Issues. The document covers the status of implementation and verification of Generic Safety Issues at licensed operating plants. It also provides an historical perspective of the growth of issues designated as GSIs.

This NUREG has been prepared to provide a comprehensive description of the implementation and verification status of all the Generic Safety Issues at licensed operating plants and to make this information available to other interested parties, including the public.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge their order by calling 202/275–2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 11th day of June, 1991.

For the Nuclear Regulatory Commission.

**Frank P. Gillespie,**

*Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.*

[FR Doc. 91–16125 Filed 7–5–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–206, 50–361, and 50–362]

## Southern California Edison Co., et al.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison Company, et al. (the licensee), to withdraw its April 28, 1989, application for proposed amendments to Provisional Operating License No. DPR–13, Facility Operating License No. NPF–10, and Facility Operating License No. NPF–15 for the San Onofre Nuclear Generating Station, Unit Nos. 1, 2, and 3, respectively, located in San Diego County, California.

The proposed amendments would have revised the Operating Licenses, to reflect ownership of San Onofre Nuclear Generating Station, which would have resulted from the merger of two co-licensees, Southern California Edison Company and San Diego Gas & Electric Company.

The Commission has previously issued and published in the **Federal Register** a Notice of Consideration of Issuance of Amendment on September 6, 1989 (54 FR 37053), and an Environmental Assessment and Finding of No Significant Impact on October 12, 1990 (55 FR 41620). However, by letter dated June 19, 1991, the licensee withdrew the proposed changes since the licensee is no longer pursuing the merger of the two companies.

For further details with respect to this action, see the licensee's application for amendments dated April 28, 1989, as supplemented by letters dated May 15, 1989, and November 5 , 1990, and the licensee's letter dated June 19, 1991, which withdrew the application for amendments. The above documents are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC, and the Local Public Document Room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland this 21st day of June 1991.

For the Nuclear Regulatory Commission.

**Lawrence E. Kokajko,**

*Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-16126 Filed 7-5-91; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301-54]**

### Termination of Quantitative Restrictions on Imports of Certain Chocolate; Candy; Apple or Pear Juices; Ale, Porter, Stout and Beer; and White Still Wines From the European Economic Community

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Determination to terminate quantitative restrictions.

**SUMMARY:** Pursuant to authority delegated by the President to the United States Trade Representative (USTR) in Proclamation No. 5478 of May 15, 1986, the USTR hereby terminates the application of quantitative restrictions on certain imported articles that are the products of the European Economic Community (EEC) proclaimed in Proclamation No. 5478, and modifies the Harmonized Tariff Schedule of the United States (HTS) accordingly, having determined that such action is justified by actions by the EEC and is otherwise appropriate.

**EFFECTIVE DATE:** 12:01 a.m. on July 8,1991.

**FOR FURTHER INFORMATION CONTACT:** Daniel Brinza, Senior Counsel for Natural Resources, (202) 395-7305, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

**SUPPLEMENTARY INFORMATION:** On May 15,1986, the President determined pursuant to section 301 of the Trade Act of 1974 (19 U.S.C. 2411) that restrictions imposed by the EEC on imports into Portugal of grain, oilseeds,and oilseed products denied benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT), were unreasonable, and constituted a burden and restriction on U.S. commerce (51 FR 18296). In Proclamation No. 5478 (51 FR 18296), the President imposed quantitative restrictions on imports into the United States of specified articles that are the product of the EEC, effective May 19, 1986. In the Proclamation, the President authorized the United States Trade Representative (USTR) to suspend, modify or terminate the quantitative restrictions on any of the articles covered by Annex I to the Proclamation upon publication in the **Federal Register** of the USTR's determination that such action is justified by actions of the EEC or is otherwise appropriate.

The level of permissible imports under the quantitative restrictions provided for in Proclamation No. 5478 was increased for calendar year 1987 and subsequent years effective October 14, 1987 (52 FR 38167), and increased again effective December 13, 1989 for calendar year 1989 and subsequent years (54 51277).

The intent of the U.S. quantitative restrictions was to impose restrictions of comparable effect to the EEC's restrictions on certain imports into Portugal. By letter of March 7, 1991, the Delegation of the Commission of the European Communities notified the Office of the United States Trade Representative that, from January 1, 1991, and in accordance with Article 292 of the 1985 Treaty of Accession, imports of oilseeds and vegetable articles are free of any limitation in Portugal. Therefore, the comparable restrictions in the United States should no longer apply.

**Action**

Pursuant to the authority granted to me in Proclamation No. 5478 of May 15, 1986, I have determined that the termination of the quantitative restrictions provided for in that Proclamation on certain chocolate; candy and other confectionery; apple or pear juices; ale, porter, stout and beer; and white still wines is justified by the EEC's elimination of its restrictions in Portugal, and is therefore appropriate, taking into account the interests of the United States. Such termination shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on July 8, 1991.

Accordingly, the Harmonized Tariff Schedule of the United States is hereby modified by striking out subheadings 9903.17.05 through 9903.17.30, inclusive, and their superior text. The modifications to the HTS made by this determination are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on July 8, 1991.

This determination shall be published in the **Federal Register.**

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 91-16107 Filed 7-5-91; 8:45 am]

BILLING CODE 3190-01-M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Northwest Conservation and Electric Power Plan Final Amendments—1991

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

**ACTION:** Notice of availability of 1991 Power Plan and Response to Comments.

**SUMMARY:** Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) (Northwest Power Act), the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan). A complete amendment of the plan was adopted in 1986. Although the Act requires the Council to review the plan at least every five years, the Council has taken up certain parts of the plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council amended the plan again in 1989 by publishing the 1989 Supplement to the 1986 Power Plan, updating the technical data and demand forecasts of the plan.

The Council voted to enter rulemaking on the 1991 revision of the plan on November 14, 1990. Close of comment for written comments was March 15, 1991. The Council held consultations through March 22, 1991. As required by the Act, public hearings were held in each of the four Northwest states. More than 200 commentors submitted oral testimony at these hearings. the Council received more than 1,300 written comments.

With the adoption of the Response to Comments on June 13, 1991, the

Northwest Power Planning Council concluded the rulemaking process for revising the Northwest Conservation and Electric Power Plan. The 1991 Power Plan supersedes both the 1986 Power Plan and the 1989 Supplement to the plan. The adoption of this plan fulfills the Council's obligation under section 4(d)(1) of the Northwest Power Act to review the plan not less frequently than once every five years.

**SUPPLEMENTARY INFORMATION:** As directed by the Northwest Power Act, the Council, shortly after its formation, developed and adopted a regional conservation and electric power plan. The plan includes an energy conservation program, including, but not limited to, model conservation standards; a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a 20 year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The plan also includes the Columbia River Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

The 1991 Power Plan is published in two volumes. Volume I (publication 91-04 contains the Council's vision of the region's energy future along the 20-year planning horizon called for in the Act. Volume II (publication 91-05) contains the underlying data and analyses on which the policy determinations found in Volume I are based. Published separately is the Council's Response to Comments.

**FOR FURTHER INFORMATION:** If you would like a copy of the 1991 Power Plan and/or the Response to Comments, please contact the Council's Public Affairs Division. Please specify which volume or volumes you want to receive.

The Council's address is: 851 SW. 6th Avenue, suite 1100, Portland, Oregon 97204. The Councils telephone numbers are: (503) 222-5161 and (toll free) (800) 222-3355.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 91-16113 Filed 7-5-91; 8:45 am]

BILLING CODE 0000-00-M

## RESOLUTION TRUST CORPORATION

### Coastal Barrier Improvement Act; Property Availability; Dacus Farm, Montgomery County, TX

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as Dacus Farm located in Montgomery County, Texas is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Ted Young, Resolution Trust Corporation, c/o Common Wealth Federal Savings Association, 10000 Memorial Drive, Houston, TX 77024, (713) 685-3953, Fax (713) 685-3419.

**SUPPLEMENTARY INFORMATION:** The property is located 55 miles northwest of the Houston Central Business District in the northwestern portion of Montgomery County, approximately 30 miles northwest of the City of Conroe. The Sam Houston National Forest is adjacent to the northern portion of the property. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of undeveloped wooded and open areas. Lake Creek traverses the entire property north to south and there are several small ponds. Lake Creek is the main source of drainage for the area. Approximately 90 percent of the property is located in 100-year flood plain and approximately 75 percent of the property is located in the floodway.

Property size: 1,082 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 7, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7, 1991 to Ted Young at the above **ADDRESSES** and in the following form:

**Notice of Serious Interest**

*Re: Dacus Farm*

*Federal Register Publication Date:*

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife, refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16142 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

## RESOLUTION TRUST CORPORATION.

### Coastal Barrier Improvement Act; Property Availability; Debordieu Colony, Georgetown County, SC

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as DeBordieu Colony located in Georgetown County, South Carolina is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Larry Adler, REO Asset Specialist, Resolution Trust Corporation, Mid-Central Consolidated Office, 4900 Main Street, P.O. Box 419570, Kansas City, MO 64141, (816) 531-2212, Fax (816) 561-0882.

**SUPPLEMENTARY INFORMATION:** The property is located just off and east of Highway 17 north of Georgetown, South Carolina, in Georgetown County, South Carolina. The property borders the Atlantic Ocean, and is adjacent to a conservation area owned by the "Bernard M. Baruch Foundation". A

Marine Institute, managed by the University of South Carolina and Clemson, is in the conservation area. The easterly property line is the mean high water line of the Atlantic Ocean and encompasses about 8,000 feet of beach front. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is divided into three "Communities" of approximately equal size. Some development has occurred on this large tract. Community I, which borders the Atlantic Ocean, is platted and partially developed for single and multi-family residences. Communities II and III are inland and are generally undeveloped. The property contains wetlands designated as such by the Army Corps of Engineers. Alligators, a bald eagle, and recently, loggerhead turtles have been seen on the property.

Property size: 2200 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 7, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7, 1991 to Larry Adler at the above **ADDRESSES** and in the following form:

**Notice of Serious Interest**

*Re: DeBordieu Colony*

*Federal Register Publication Date:* _____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resources conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16143 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

## Coastal Barrier Improvement Act; Property Availability; The Flying Raven Ranch, Gunnison County, CO

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as The Flying Raven Ranch, located at 22822 Highway 149, Gunnison County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the Resolution Trust Corporation until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: John Gillespie, Resolution Trust Corporation, P.O. Box 1500, Valley Forge, PA 19482-1500, (215) 631-4793, Fax (215) 650-8558.

**SUPPLEMENTARY INFORMATION:** The property is located at 22822 Highway 149, Gunnison County, 16 miles southwest of Gunnison, Colorado. It is adjacent to Bureau of Land Management property. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 144a-3).

**Characteristics of the Property Include:** The property is a scenic mountain recreational ranch, with a 2,450 square foot, ten year old, three level log home. In addition to the log home, the property has four rustic cabins for outfitters or guests, along with a 1,200 square foot shop/garage. Deer and elk hunting is excellent; there is a stocked trout pond on the ranch.

**Property Size:** 1,068 Acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 7, 1991, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal Government;

2. Agencies or entities of the State or Local Government; and

3. "Qualified organization" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7, 1991, to John Gillespie at the above address and in the following form:

**Notice of Serious Interest—Re: The Flying Raven Ranch Federal Register Publication Date:** _____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or nature resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16145 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

## Coastal Barrier Improvement Act; Property Availability; Friedrich Tract, Lake Jackson, TX

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as the Friedrich Tract located west of Lake Jackson, Brazoria County, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed to the RTC until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Betty Shute, Resolution Trust Corporation, 131 Oyster Creek Drive, Lake Jackson, Texas 77566 (713) 393-3025.

**SUPPLEMENTARY INFORMATION:** The property is located just west of the City of Lake Jackson, Brazoria County, Texas

and is adjacent to property recently purchased by the City of Lake Jackson for expansion of a wilderness park, and for future development as a municipal golf course. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is located within the 100-year floodplain and is undeveloped, mostly landlocked, and heavily wooded with dense brush undergrowth. The site is accessed by a right-of-way from State Highway 332.

**Property size:** 656.25 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 7, 1991, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7,1991, to Betty Shute at the above **ADDRESSES** and in the following form:

**Notice of Serious Interest—Re: Friedrich Tract Federal Register Publication Date:_____**

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16144 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

## Coastal Barrier Improvement Act; Property Availability; Long Bayou, Seminole, FL

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is herby given that the property known as Long Bayou located in Seminole, Pinellas County, Florida is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Andrew S. Hamrick, Resolution Trust Corporation, Southwest Consolidated Office, 4200 W. Cypress Street, Suite 1010, Tampa, Florida 33622-0587, (813) 870-7219, Fax (818) 870-7130.

**SUPPLEMENTARY INFORMATION:** The property is located in the 9700 Block of 62nd Terrace in Seminole, Pinellas County, Florida and is adjacent to Lake Seminole Recreational Park, a recreational area managed by the County of Pinellas. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is undeveloped with portions located within the 100-year floodplain. Approximately 18 acres of the property are submerged; 12 acres contain mangroves; and 46 acres are generally level uplands consisting of sandy soil and some native palms. All public services and utilities are available to the site.

**Property size:** 77.37 acres.

Written notice of serious interest in the purchase of other transfer of the property must be received on or before [insert date 90 days after Federal Register publication date] by the Resolution Trust Corporation at the address stated above.

Those entites eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of the State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7, 1991. To Andrew S. Hamrick at the above **ADDRESSES** and in the following form:

**Notice of Serious Interest—Re: Long Bayou Federal Register Publication Date: _____**

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16146 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

## Coastal Barrier Improvement Act: Property Availability; Rolling Hills I & II, Castroville, CA

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as Rolling Hills I and II located in Castroville, Monterey County, California is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Eric Friedland, Resolution Trust Corporation, P.O. Box 1800, Costa Mesa, CA 92628, (714) 631-8600, Fax (714) 548-8340.

**SUPPLEMENTARY INFORMATION:** The property consists of an assemblage of five parcels divided into two sites. The North Site contains 125.9 acres and the South Site 55.3 acres. The North Site has been known as the Villa Nueva and Rolling Hills I Site. The South Site was known as Villa Verde and Rolling Hills II. The property is located northeast of

Castroville, California in Monterey County. The Moro Cojo Slough and the Moro Cojo Wildlife Area extend between the North and South Sites. The California State Department of Fish and Game manages the Moro Cojo Wildlife Area. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The Moro Cojo Slough extends between the North and South Sites and flows westward emptying into the Monterey Bay at Moss Landing. Wetlands occur on the property. The property is a critical habitat for the Santa Cruz long toed salamander, which is an endangered species, and the black legless lizard, currently designated a Species of Special Concern, which is under study for possible listing.

**Property size:** 181.2 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 7, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7, 1991 to Eric Friedland at the above **ADDRESSES** and in the following form:

**Notice of Serious Interest—Re: Rolling Hills I & II Federal Register Publication Date: _____**

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16147 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

## Coastal Barrier Improvement Act; Property Availability; Wen-Clay Land, Dallas County, TX

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as the Wen-Clay Land located in the Cities of Grand Prairie and Cedar Hill, Dallas County, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 7, 1991.

**ADDRESSES:** Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: William M. Ruff, Resolution Trust Corporation, Mid-Atlantic Consolidated Office, 100 Colony Square, Suite 2300, Atlanta, GA 30361, (404) 881-5059, Fax (404) 881-4995.

**SUPPLEMENTARY INFORMATION:** The property is located at the northwest corner of Anderson Road and Texas Plume Road, in the Cities of Grand Prairie and Cedar Hill, Dallas County, Texas adjacent to Pleasant Valley Park, which is owned and operated by the United States Army Corps of Engineers. The Park is located on the shores of Joe Pool Lake and is used for boat launching and other activities related to the Lake's recreational use. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is rolling in topography with some wooded areas, and slopes gently to Joe Pool Lake. Anderon and Texas Plume roads provide access to the property.

**Property size:** 252.54 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 7, 1991, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 7, 1991 to William Ruff at the aboved **ADDRESSES** and in the following form:

**Notice of Serious Interest—RE: Wen-Clay Land Federal Register Publication Date: _____**

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 1, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16148 Filed 7-5-91; 8:45 am]

BILLING CODE 6714-01-M

# SECURITIES AND EXCHANGE COMMISSION

## Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549

**Revision**

*Regulation 14A (No. 270-56)*

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval proposed revisions to Regulation 14A. Regulation 14A affects approximately 8733 filers for a total of 899,499 burden hours. The estimated average burden hours are made solely for the purposes of the Paperwork

Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commissions forms and rules. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 20, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-16090 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

## Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street NW., Washington, DC 20549

**Extension**

*Rule 12b-1, File No. 270-188*

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 12b-1 under the Investment Company Act of 1940 [17 CFR 270.12b-1].

Rule 12b-1 requires registered open-end investment companies that intend to distribute their own securities and pay expenses of distribution to adopt a distribution plan, provide directors with quarterly reports of expenditures pursuant to that plan and keep certain records.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208 NEOB, Washington, DC 20503.

Dated: June 14, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-16091 Filed 7-5-91; 6:45 am]

BILLING CODE 8010-01-M

## Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street NW., Washington, DC 20549

**Extension**

*Form N-17f-1, File 270-316*

*Form N-17f-2, File 270-317*

*Form ADV-E, File 270-318*

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms N-17f-1 and N-17f-2 under the Investment Company Act of 1940 ("1940 Act") and Form ADV-E under the Investment Advisers Act of 1940 ("Advisers Act").

Form N-17f-1 is the cover sheet for accountant examination certificates filed pursuant to rule 17f-1 under the Act by management investment companies maintaining securities or other investments with companies that are members of a national securities exchange. There are approximately 23 registrants currently filing accountant examination certificates. The time necessary for investment companies to comply with the form's requirements is less than three minutes.

Form N-17f-2 is the cover sheet for accountant examination certificates filed pursuant to rule 17f-2 under the 1940 Act by management investment companies maintaining custody of securities or other investments. There are approximately 115 registrants currently filing accountant examination certificates. The time necessary for investment companies to comply with the form's requirements is less than three minutes.

Form ADV-E is the cover sheet for accountant examination certificates filed pursuant to rule 206(4)-2 under the Advisers Act by investment advisers retaining custody of client securities or funds. There are approximately 1200 registrants currently filing accountant examination certificates. The time necessary for investment advisers to comply with the form's requirements is less than three minutes.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235-0359, 3235-0360 and 3235-0361 [Forms N-17f-1, N-17f-2 and ADV-E]), room 3208 NEOB, Washington, DC 20503.

Dated: June 10, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-16092 Filed 7-5-91;8:45am]

BILLING CODE 8010-01-M

## Forms Under Review by Office of Management and Budget

*Agency Clearance officer;* Kenneth A. Fogash, (202) 272-2142.

*Upon Written Request Copy Available From:* Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

*Extension:* Rule 204-2 File No. 270-215, Rule 206(4)-3 File No. 270-218, Rule 206(4)-4 File No. 270-304.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 204-2 [17 CFR 275.204-2] rule 206(4)-3 [17 CFR 275.206(4)-3] and rule 206(4)-4 [17 CFR 275.206(4)-4] under the Investment Company Act of 1940 ("1940 Act").

Rule 204-2 is the recordkeeping rule applicable to registered investment advisers ("advisers"). There are approximately 16,534 advisers that would be subject to the recordkeeping

rule, which requires approximatley 224 burden hours per year per adviser.

Rule 206(4)-3 provides restrictions on cash payments for client solicitations. It is applicable to all registered investment advisers. It is believed that approximately 500 of these advisers have cash referral fee arrangements with advisers. The rule requires approximately 7 burden hours per year per adviser.

Rule 206(4)-4 requires advisers to disclose certain financial and disciplinary information to clients. Approximately 810 advisers are subject to this rule which requires approximatley 7.5 burden hours per year per adviser.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 10, 1991.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-16093 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

## Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth Fogash (202) 272-2142.

*Upon written request copy available from:* Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549-1002.

Form F-7, File No. 270-331, Form F-8, File No. 270-332, Form F-80, File No. 270-357.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission (the "Commission") has submitted for OMB approval revised Form F-7 (registration of securities offered upon the exercise of rights granted to existing security holders of the registrant), revised Form F-8 (registration of securities to be issued in certain exchange offers), and new Form F-80 (registration of securities to be issued in certain exchange offers which do not qualify for use of Form F-8).

The Commission's staff estimates that up to 250 Canadian companies may avail themselves of Forms F-7, F-8 and F-80 per year. The preparation of each of these forms should take approximately two hours per response per form. These forms, however, take less time to prepare than the registration forms currently applicable to these types of offerings and thus are expected to result in a decrease in the burden hours required for the collection of information. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 1991.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-16094 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-29388; File Nos. SR-NSCC-91-06, SR-MCC-91-03, and SR-SCCP-91-03]**

## Self-Regulatory Organizations; National Securities Clearing Corporation, Midwest Clearing Corporation, and Stock Clearing Corporation of Philadelphia; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Changes Relating to Earlier Trade Guarantees and Revised Clearing Fund Formulas

June 28, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, as amended ("Act"),[1] notice is hereby given that the National Securities Clearing Corporation ("NSCC"), the Midwest Clearing Corporation ("MCC"), and the Securities Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (SR-NSCC-91-06, SR-MCC-91-03, and SR-SCCP-91-03) described below.[2] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. This order also approves temporarily the proposals on an accelerated basis through June 30, 1992.

### I. Description of the Proposals

The proposals seek approval of proposed rule changes that would permit NSCC, MCC, and SCCP (collectively "Clearing Corporations") to: (1) Guarantee at an earlier time settlement of member trades in their respective Continuous Net Settlement ("CNS") systems; and (2) revise the CNS portion of their respective clearing fund formulas to protect against increased risk posed by such earlier guarantees.[3] The Commission approved these proposals for the Clearing Corporations on a temporary basis through June 30, 1991.[4] The salient features of these proposals are described briefly below.[5]

*A. NSCC*

NSCC's proposal permits it to guarantee settlement of pending CNS trades as of midnight plus one day after the trade date for locked-in trades and on midnight on the day trades are reported to members as compared for non-locked-in trades. Prior to its original proposal, NSCC guaranteed settlement of CNS trades on the fourth day after trade date (T+4). NSCC's proposal reduces the time during which clearing members are exposed to the risk of contra-side default but increases the time during which NSCC is exposed to such risk.

To protect against increased CNS system risk associated with an earlier

[1] 15 U.S.C. 78s(b).

[2] The proposed rule changes were filed as follows: NSCC (SR-NSCC-91-06) on June 6, 1991; MCC (SR-MCC-91-03) on June 27, 1991; and SCCP (SR-SCCP-91-03) on June 10, 1991.

[3] The proposals were filed originally by the Clearing Corporations as follows: NSCC (SR-NSCC-87-04) on February 27, 1987, with amendments on March 11, 1987, and October 1, 1987; MCC (SR-MCC-87-03) on June 2, 1987; and SCCP (SR-SCCP-87-03) on October 26, 1987, with an amendment on June 8, 1989.

[4] See Securities Exchange Act Release Nos. 28728 (December 31, 1990), 56 FR 717 and 27192 (August 29, 1989), 54 FR 37010 ("Temporary Approval Orders").

[5] For a comprehensive description of the Clearing Corporations' propos ls, see Temporary Approval Orders, *Id.*

guarantee, NSCC proposes to revise the CNS portion of its clearing fund formula. NSCC's revised clearing fund formula requires each member to contribute as the CNS portion of its clearing fund requirement an amount approximately equal to: (1) Two percent (2%) of the member's projected total long CNS positions; plus (2) the net of each day's difference between the contract price of pending, compared CNS trades and the current market price for all guaranteed pending CNS trades that have not yet reached settlement; plus (3) one-fourth of one percent (.25%) of the net of all guaranteed, pending CNS trades and open CNS positions.

NSCC calculates the CNS portion of its clearing fund requirement daily and collects clearing fund deposits monthly unless circumstances justify additional deposits on a more frequent basis. As a part of NSCC's monitoring of clearing fund deposits, NSCC will determine on a daily basis whether changes in a member's required deposit relating to CNS activity breaks certain parameters. NSCC may collect additional intramonth deposits from a member if: (1) That member's current clearing fund requirement (based on the previous twenty business days' activity) for CNS activity is more than twenty-five percent (25%) higher than the previous month-end required clearing fund deposit; of (2) the average of that member's last five calculations, as described in (1) above, is more than fifteen percent (15%) higher than the previous month-end requirement. NSCC collects intramonth deposits on the day these parameter breaks occur if a member's clearing fund deposit is insufficient to cover the deficiency. NSCC does not require an increased contribution if the deficiency is less than either ten percent (10%) of the member's clearing fund deposit or $10,000. NSCC may grant exemptions from the additional deposit requirement in certain circumstances.

*B. MCC*

MCC's proposal provides for earlier guarantees in precisely the same fashion as does NSCC's proposal. MCC also has revised the CNS portion of its clearing fund formula to help protect against risks associated with earlier guarantees.

Under MCC's proposal, assessments for the clearing fund will be based on the following formula: (1) All presettlement long and short settling CNS trades will be summarized daily for the previous twenty day period; (2) for each day that a member has a net debit exposure, based on mark-to-market, such member will be assessed at a rate of 102% of the net debits exposure; and (3) the average twenty day net debit exposure figure will serve as the additional clearly fund contribution. Members whose average net debit exposure for the twenty day period is below the minimum $5,000 clearing fund deposit will not be required to provide additional funds.

Procedures pertaining to contributions to the clearing fund will be as follows: (1) Calculation of clearing fund requirements will take place daily; (2) increases of the net debit exposure less than or equal to 10% of the twenty day net debit exposure moving average will be assessed weekly; and (3) a net debit exposure increase of more than ten percent (10%) over the twenty day net debit exposure moving average could be requested on the day of calculation. MCC, in its discretion, may defer such requests until the weekly assessment. Any interest received from the investment of the clearing fund, less a daily service charge of .05% to cover the administration of the invested funds, shall accrue to the members.

*C. SCCP*

SCCP's proposal also provides for earlier guarantees in precisely the same fashion as does NSCC's and MCC's proposals. In order to help minimize any additional risks from earlier guarantees and to more adequately collateralize any CNS system risks, SCCP also has modified its existing formula for calculating required CNS clearing fund contributions. The new formula enables SCCP to collect the current mark-to-market value of the securities still pending settlement. Under the old system, SCCP only collected the value of such securities on or after the settlement date (T+5).

Contributions to the clearing fund are assessed based upon the larger of: (1) A member's monthly average of trading activity based on the preceding quarter with an assessment of $1,000 for every 25 trading units of 100 shares (with a $5,000 minimum and $50,000 maximum contribution); the first $25,000 must be in cash and the remainder may be in high grade bonds; or (2) a member's aggregate dollar amount of all long trades at their execution price for each quarter divided by the number of days in such quarter times two percent (2%) (with a maximum $100,000 contribution). In addition to the above adjustments and as a further means of reducing risks generated by earlier guarantees, all clearing fund contributions will be adjusted daily with respect to any mark-to-market exposure. Adjustments of less than $10,000 may be waived by SCCP.[6]

[6] SCCP has examined the effects of the new formula for calculating Participants Fund Contributions. Only one participant has been significantly effected, and that firm was made aware of their potential exposure prior to the onset of the new program. SCCP has also placed a $100,000 cap on any member's contribution in order to limit extreme increases. That cap has only been applied for one member.

## II. The Clearing Corporations' Rationale for the Proposal

The Clearing Corporations believe that the proposed rule changes are consistent with section 17A of the Act in that they facilitate the prompt and accurate clearance and settlement of securities transactions for which they are responsible.

## III. 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of NSCC, MCC, and SCCP. All submissions should refer to File Nos. SR-NSCC-91-06, SR-MCC-91-03, and SR-SCCP-91-03 and should be submitted by July 29, 1991.

## IV. Accelerated Temporary Approval

Following the approval on a temporary basis of the Clearing Corporations' original proposals, the Commission has examined the effects of the Clearing Corporations' procedures for earlier guarantees and their revised formulas for calculating CNS clearing fund contributions. The Commission believes that these procedures have functioned adequately during the applicable temporary approval period and that good cause exists for reapproving the proposals on a temporary basis in that they are consistent with section 17A of the Act. Specifically, the Commission believes the proposals are designed to increase trade settlement certainty without compromising the safety of member

funds and securities.[7] The Commission is approving the proposal on a temporary basis, however, while it continues to monitor the adequacy of the NSCC, MCC, and SCCP safeguards applicable to earlier guarantees. In this respect, the Commission notes that during the ensuing temporary approval period, the Clearing Corporations are subject to a continuing obligation to provide data to the Commission pertaining to the ability of the revised CNS clearing fund formulas to guard against increased risk posed by earlier guarantees.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** in order to allow NSCC, MCC, and SCCP to continue to provide their participants with access to the improved trade guarantee that is currently in effect and which expires on June 30, 1991.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[9] That the proposed rule changes (SR-NSCC-91-06, SR-MCC-91-03, and SR-SCCP-91-03) be, and hereby are, approved on a temporary basis through June 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-16095 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-29389; File No. SR-NSCC-91-04]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change Regarding Members' Required Clearing Fund Deposits

June 28, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, as amended ("Act"),[1] notice is hereby given that on May 21, 1991, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-91-04) as described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed also below, this order grants approval of the proposal on a temporary basis through June 30, 1992.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

The proposed rule change [2] modifies the amount of an NSCC member's clearing fund deposit that may be collateralized by letters of credit. The proposal increases the minimum cash contribution for those members who use letters of credit and sets a limit on the amount of a member's required clearing fund contribution that may be collateralized with letters of credit.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and statutory 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 place specified in Item V below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

NSCC is seeking approval of a proposed rule change that modifies the amount of a member's clearing fund required deposit that may be collateralized by letters of credit. Specifically, the proposed rule change will increase the minimum cash contribution for those members who use letters of credit from $50,000 to the greater of $50,000 or 10% of their clearing fund required deposit up to a maximum of $1,000,000. The proposed rule change also provides that only 70% of a member's required deposit may be collateralized with letters of credit. Finally, the proposed rule change has added headings to the clearing fund formula section of NSCC's rules for clarity and has made other nonsubstantive drafting changes. The intended effect of the proposed rule change is to increase the liquidity of the clearing fund and to limit NSCC's exposure to any unusual risk from the reliance on letters of credit. NSCC indicates that this is a goal that the Commission has endorsed to insure the liquidity of the clearing system in the event of a major member insolvency, catastrophic loss, or a major settlement suspense. Since obtaining temporary approval of the original filing, NSCC has filed clearing fund composition reports with the SEC. As a result of the new requirements, NSCC states it has experienced the following respecting the composition of its clearing fund deposits:

(1) The value of cash deposited has increased by 71%;

(2) The value of securities deposited has increased by approximately 76%;

(3) The value of letters of credit deposited has declined by approximately 20%, and

(4) Overall, the value of case and securities now deposited for clearing fund requirements has increased by approximately 96%.

Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control and protect the public interest, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC received one comment letter from Wedbush Morgan Securities Inc. ("Wedbush"). In its letter, Wedbush agreed with the need for liquidity of the clearing fund in the event of a major member insolvency, but Wedbush objected to the filing because of its belief that the proposal would increase the cost of posting collateral. In response, NSCC has agreed that the rule proposal would result in increases in

---

[7] For a more comprehensive discussion, see Temporary Approval Orders, *supra* note 4.

[8] The Commission's data request is delineated in the Temporary Approval Orders. The Commission reserves the right to amend the data request during the ensuing temporary approval period for any of the Clearing Corporations in order to obtain the most useful and accurate information available.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b).

[2] The proposed rule change was filed originally on October 27, 1989 (File No. SR-NSCC-89-16) and was approved temporarily through December 31, 1990. (Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297). The proposal was refiled on December 18, 1990 (File No. SR-NSCC-90-27) and was approved temporarily through June 30, 1991. (Securities Exchange Act Release No. 28727 (December 31, 1990), 56 FR 716).

participants' cost to fund collateral deposits. NSCC noted, however, that in the event of a major default the proposed change would guarantee continued access to the credit market.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that good cause exists for approving the proposal in that it is consistent with the requirements of sections 17A(b)(3) (A) & (F) of the Act.[3] Such sections require that, amongst other things, clearing agencies be designed, organized, and have the capacity to (1) facilitate the prompt and accurate clearance and settlement of securities transactions for which they are responsible and (2) safeguard securities and funds in their custody or control or for which they are responsible.

As delineated above, since obtaining temporary approval of the proposal, NSCC has experienced desirable results respecting the composition of its clearing fund deposits. According to NSCC, the value of cash and securities deposited for clearing fund requirements has increased by approximately 96%. This enhanced level of clearing fund deposits that are more liquid than letters of credit indicates that the proposed rule change will help to insure the liquidity of the clearing system in the event of a major member insolvency, catastrophic loss, or a major settlement suspense. As such, the proposal, while allowing the continued use of this form of collateral, enables NSCC to improve its capacity to safeguard securities and funds for which it is responsible and thus promotes the prompt and accurate clearance and settlement of securities transactions.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with sectio 17A. Accordingly, the Commission is approving the proposed rule change on a temporary basis. Furthermore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** in that the proposed rule change will help reduce the exposure of NSCC's Clearing Fund to the possibility of the liquidity risks associated with letters of credit.

### 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-91-04 and should be submitted by July 29, 1991.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[4] That the proposed rule change (SR-NSCC-91-04) be, and hereby is, approved on a temporary basis through June 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-16096 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78q-1(b)(3) (A) & (F).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30-3(a)(12).

---

**[Release No. 34-29393; File No. SR-NYSE-91-22]**

## Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Handling and Executing Market-On-Close Orders

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 June 6, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, for an additional three months, the one-year pilot program regarding the procedures for handling and executing market-on-close ("MOC") orders which was approved by the Commission on June 29, 1991.[1] The Exchange also is requesting a concurrent three month extension of the exemption from the short sale rule, Rule 10a-1 under the Act,[2] for an MOC sell order when the order is entered with an off-setting MOC buy order and is part of a program trading strategy.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an 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 III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) *Purpose*

In File No. SR-NYSE-89-10, submitted to the Commission on June 1, 1989 ("June filing"), the Exchange proposed to amend its rules governing MOC orders.[3] The proposed rule change modified the Exchange's procedures for handling and executing MOC orders to provide (1) that such orders are to be executed at the closing price on the Exchange and, if not so executed, are to be cancelled; and (2) for the entry, and execution, of matched MOC orders by the same member firm.

The Commission temporarily approved the June filing for a one year pilot period.[4] The purpose of the proposed rule change herein is to request an extension of the one year pilot program, scheduled to terminate on June 29, 1991, until September 30, 1991. The Exchange will submit to the

[1] See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order approving File No. SR-NYSE-89-10).

[2] 17 CFR 240.10a-1 (1990).

[3] The NYSE rules affected by the proposal are NYSE Rules 13, 116 and 123.

[4] See note 1, *supra*.

Commission by July 8, 1991, a report assessing the effectiveness of the proposed procedures, and may seek permanent approval of the procedures at that time.

The Exchange also is requesting an extension of the no action position taken by the Commission's Division of Market Regulation at the time of the approval of the proposed rule amendments in the June filing.[5] The Exchange continues to believe, as outlined in the June filing, that the execution of a MOC order to sell short does not offer an opportunity for price manipulation when that order is both entered and executed against an offsetting MOC buy order and is part of a program trading strategy.

(b) *Statutory Basis*

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

**III. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-22 and should be submitted by July 29, 1991.

**IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful review, the Commission has decided to approve the NYSE's proposal to extend the effectiveness of the pilot program regarding MOC orders until September 30, 1991.[6] In the order originally approving the MOC procedures herein, the Commission noted that the objective of the proposal is to attract the order flow being executed overseas back to the NYSE, with the attendant benefits of Commission and Exchange oversight pursuant to the Act, trade reporting, and consolidated surveillance.[7] Accordingly, the Commission found the proposal to be consistent with section 6 of the Act.[8] The Commission expressed its concern, however, regarding the matching of MOC orders by member firms. Specifically, the Commission was concerned that matched orders are executed without the opportunity for order exposure or interaction with the trading crowd, resulting in some customer orders in the crowd or on the limit book being by-passed. Accordingly, the Commission approved the NYSE proposal for a one year pilot basis only, and suggested that the Exchange develop an after-hours trading system which would permit the participation of other orders, or in the alternative, an amendment to Rule 390 for after-hours trading.[9]

Since that time the NYSE has submitted, and the Commission has approved, the initial phases of the NYSE's plan to implement after-hours trading. The Exchange, however, is in the process of completing the pilot report requested by the Commission in the order approving the MOC procedures for one year. In order to evaluate the MOC pilot, the Commission needs to review the pilot report. Accordingly, the Commission finds it appropriate to extend the effectiveness of the current MOC procedures for three months. Under this timetable, the NYSE's report evaluating the effects of the MOC procedures should be submitted to the Commission by July 8, 1991. This report should provide sufficient guidance to the Commission when determining whether to grant permanent approval to the MOC procedures in the future.[10]

For the reasons set forth above, the Commission finds that approval of the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, section 6(b)(5) of the Act.[11] Specifically, the Commission believes that the proposal promotes just and equitable principles of trade, facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. Accelerated approval enables the Exchange to continue, on an uninterrupted basis, the

[5] See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President and Secretary, NYSE, dated July 2, 1990, [1990 Decisions] Fed. Sec. L. Rep. (CCH) ¶ 79,651.

[6] As previously noted, the Commission granted a limited exemption from Rule 10a-1 for a MOC order entered as part of a paired MOC order (see note 5, *supra*). The effectiveness of this exemption terminates on June 29, 1991, concurrent with the expiration of the MOC pilot period. Pursuant to this order, the Commission is granting, until September 30, 1991, an extension of the relief from Rule 10a-1 regarding a MOC order to sell short that is entered by a member firm where (1) the member firm also has entered a MOC order to buy the same amount of stock, and (2) the MOC order is part of a program trading strategy by the member firm, and the orders are identified as such. As indicated in the order approving the MOC procedures for a one year pilot period (see note 1, *supra*), the Commission believes that matched MOC orders that are part of a program trading strategy do not raise the same concerns that are applicable to transactions in individual stocks, and that it is appropriate to exempt such transactions from the operation of the short sale rule.

[7] Essentially, the MOC proposal responds to the existing demand for a means to execute program trading strategies, such as Exchanges for Physicals ("EFPs") and "portfolio rebalancing", at the closing price in U.S. Securities that are being executed overseas because of lack of pricing certainty. See Securities Exchange Act Release No. 28167 (note 1, *supra*) for a fuller discussion of both EFPs and portfolio rebalancing.

[8] 15 U.S.C. 78f (1988).

[9] In general, NYSE Rule 390 prohibits a member from effecting a transaction otherwise than on an exchange as principal or as an in-house agency cross in a security listed on the exchange before April 26, 1979.

[10] In this regard, if the Exchange decides to extend the effectiveness of the pilot program beyond its September 30, 1991 termination or to request permanent approval of the MOC procedures, then it should submit a proposed rule change to the Commission by August 26, 1991.

[11] 15 U.S.C. 78f(b) (1988).

procedures currently used for handling and executing MOC orders. The additional three month continuation of the pilot program should allot the Exchange sufficient time to determine whether to submit to the Commission a proposed rule change seeking permanent approval of the MOC procedures.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act[12] That the proposed rule change be, and hereby is, approved for the pilot period ending September 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: July 1, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-16097 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-29396; International Series Release No. 295; File No. SR-OCC-91-02]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Amending the Capital Provisions of the August 20, 1987 Clearing Agreement Between The Options Clearing Corporation and the ACHA Associate Clearing House Amsterdam B.V.

July 1, 1991.

On February 11, 1991, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR-OCC-91-02) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] relating to an amendment to the capital provision of August 20, 1987 Clearing Agreement between The Options Clearing Corporation and the ACHA Associate Clearing House Amsterdam ("ACHA"). Notice of the proposal appeared in the **Federal Register** on April 1, 1991, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

### I. Description of the Proposal

*A. Summary*

The proposed rule change will amend the associate clearinghouse agreement ("Clearing Agreement") dated August 20, 1987 between OCC and ACHA [3] and the corresponding letter agreement also dated August 20, 1987 ("Letter Agreement").[4] In brief, the proposed amendments will: (1) Increase ACHA's permanent capital requirements, (2) require ACHA to notify OCC of certain reductions of ACHA's capital, and (3) require ACHA to increase its existing overdraft facility.

*B. The Proposal*

Specifically, the proposed amendments to the Clearing Agreement will: (1) Increase the amount of ACHA's required "permanent capital" [5] from the greater of 10% of its aggregate daily margin or $250,000 (U.S.) to the greater of 10% of its aggregate daily margin requirement or $750,000 (U.S.) [ACHA still will be required to maintain liquid current assets of at least the greater of 10% of its aggregate daily margin requirement of $150,000 (U.S.)]; and (2) provide an "early-warning" mechanism, similar to that imposed on OCC's domestic clearing members,[6] to notify OCC when ACHA's permanent capital falls below the greater of 12.5% of its aggregate daily margin requirement or $1,000,000 (U.S.). The subordinated debt portion of ACHA's permanent capital may not exceed 90% of such capital, and no more than 70% of the subordinated debt shall have an initial term of less than three years and a remaining term of less than 12 months.

Further, under the proposed amendments, the Letter Agreement will be amended to provide that ACHA must maintain an overdraft facility in an amount equal to the greater of $5 million (U.S.) or the aggregate amount of the greater of either the upside or downside intra-day margin call requirement for each ACHA Participant at a 100% variance as reported in the OCC-prepared Estimated Intra-Day Margin Call Report. Thus, in addition to ACHA's existing $5 million in overdraft protection, the proposal will subject ACHA's overdraft requirements to the volatility standards of OCC's intra-day margin requirement, which is based on OCC's TIMS methodology.[7] OCC also has represented to the Commission that as part of this overdraft agreement ACHA will continue to maintain a minimum balance of $5 million at the Bank of New York.[8]

### II. Discussion

The Commission believes the proposal is consistent with the Act, particularly section 17A of the Act.[9] Section 17A(b)(3)(F) of the Act [10] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the control of clearing agencies. Moreover, section 17A(a)(1) of the Act [11] encourages efficient, effective, and safe procedures for securities clearance and settlement.

The Commission recognizes that the OCC-ACHA agreement is a unique arrangement in that ACHA is considered to be both an associate clearinghouse of OCC and an index clearing member. OCC's relationship with ACHA, therefore, differs in several respects from that between OCC and its other clearing members. First, ACHA is not a broker or dealer and thus is not registered as such with the Commission. Second, ACHA's only operating functions are to guarantee and clear trades in XMI options for its participants; [12] *i.e.* ACHA may neither invest in securities nor process any securities or investment products other than XMI options. Third, ACHA is not required to meet OCC's financial requirements for clearing members, such as initial and continuous net capital levels.[13] ACHA, however, has no

---

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29007 (March 25, 1991), 56 FR 1350.

[3] ACHA is a limited liability company organized under the laws of the Netherlands. ACHA is a wholly-owned subsidiary of EOCC European Options Clearing Corporation Holding B.V., previously known as the European Stock Options Clearing Corporation B.V. [the clearing corporation for the European Options Exchange ("EOE")].

[4] As noted *infra,* the Clearing Agreement and the Letter Agreement set forth terms by which OCC would guarantee and clear transactions of ACHA's participants in the Major Market Index ("XMI") index option that is traded on the American Stock Exchange, Inc. ("Amex") and on EOE. The terms of these existing clearinghouse agreements concerning OCC and ACHA were approved by the Commission. See Securities Exchange Act Release No. 24832 (August 26, 1987), 52 FR 32377 [SEC File No. SR-OCC-87-09].

[5] The proposal defines "permanent capital" as the sum of ACHA's shareholders' equity and subordinated debt.

[6] The domestic "early warning" system is imposed pursuant to OCC Rule 303.

[7] For a discussion of TIMS methodology, see Securities Exchange Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR-OCC-89-12].

[8] Telephone conversation between Stewart C. Harvey, Jr., Counsel, OCC, and Thomas C. Etter, Jr., Attorney, Commission (May 6, 1991).

[9] 15 U.S.C. 78q-1.

[10] 15 U.S.C. 78q-1(b)(3)(F).

[11] 15 U.S.C. 78q-1(a)(1).

[12] Technically, ACHA will process an EOE trade in XMI only for non-members of OCC. Securities Exchange Act Release No. 24832 (August 21, 1987), 52 FR 32377 [SEC File No. SR-OCC-87-09]. ACHA currently processes XMI trades for 13 participants, all of which are European banks. Telephone conversation between Stewart C. Harvey, Jr., Counsel, OCC, and Thomas C. Etter, Jr., Attorney, Commission (June 12, 1991).

[13] As stated above, ACHA is not a broker or dealer and is not registered as such with the Commission. Accordingly, ACHA is not subject to

Continued

exemption from posting OCC clearing fund and margin deposits and must post the same clearing fund and margin amounts as applicable to all other OCC members.[14]

Since the commencement of the OCC-ACHA relationship in 1987, the volatility of XMI's market price and the volume of XMI transactions that ACHA has guaranteed and cleared on behalf of its participants have increased substantially.[15] As a consequence, OCC has requested ACHA to increase its permanent capital to a level commensurate with ACHA's increased Activity. ACHA has choses to so through subordinated debt.[16]

The Commission believes that the proposal will enhance OCC's safeguards against default by members and non-members, including ACHA. OCC also is subjecting ACHA to an "early warning" mechanism designed to provide OCC with notice of any significant erosion of ACHA's capital.[17] Accordingly, the Commission finds that the proposed rule change is consistent with sections 17A(b)(3)(F) and 17A(a)(1) of the Act.[18]

## III. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly section 17A of the Act,[19] and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[20] That the above-mentioned proposed rule change (File No. SR-OCC-91-02) be, and hereby is, approved.

the Act's Rule on Net Capital Requirements for Brokers or Dealers (*i.e.*, the Net Capital Rule), Rule 15c3-1, 17 CFR 240.15c3-1, a rule that applies only to brokers or dealers registered with the Commission under Section 15 of the Act, 15 U.S.C. 78o.

[14] See, *e.g.*, OCC rules 610, 1001.

[15] See, *supra*, note 12.

[16] Changes to ACHA's rules also were necessary so that its subordinated debt (held by its parent EOCC European Options Clearing Corporation Holding B.V., previously known as the European Stock Options Clearing Corporation B.V.) could be counted as capital of ACHA. Telephone conversation between Stewart C. Harvey, Jr., Counsel, OCC, and Thomas C. Etter, Jr., Attorney, Commission (April 29, 1991). OCC has represented that the subordinated loan agreement to be entered into between ACHA and its parent company, the EOCC European Options Clearing Corporation Holding, B.V. meets the requiremetns of appendix D to Rule 15c3-1, 17 CFR 240.15c3-1, in all material respects. See letter from Stewart C. Harvey, Jr., Counsel, OCC, to Ester Saverson, Jr., Branch Chief, Commission, dated June 11, 1991.

[17] See OCC Rule 303.

[18] 15 U.S.C. 78q-1(b)(3)(F) and § 78q-1(a)(1).

[19] 15 U.S.C. 78q-1.

[20] 15 U.S.C. 78s(b).

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[21]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-16099 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

[21] 17 CFR 200.3-30(a)(12).

---

**[Release No. 34-29394; File No. SR-Phlx-91-22]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Odd-Lot Pricing Procedures

On May 6, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Rules 227 and 229 relating to the execution of odd-lot orders. The proposed amendments revise the Exchange's pricing procedures for odd-lot limit orders.

The proposed rule change was noticed in Securities Exchange Act Release No. 29210 (May 20, 1991), 56 FR 24230 (May 29, 1991). No comments were received on the proposal.

Current Rule 227, which governs odd-lot limit orders in securities for which another exchange is the primary market, provides odd-lot limit orders with the guarantee of an execution after a sale occurs in the primary market through the limit price.[3] Current Rule 229, which governs the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"), provides odd-lot limit orders with the guarantee of an execution after a sale takes place on the New York market [4] through the limit price.[5] The Exchange proposes to amend Rules 227 and 229 to require that odd-lot limit orders be executed at the limit price when a sale occurs in the primary market, for purposes of Rule 227, or in the New York market, for purposes of Rule 229, at the limit price.

The Exchange states that this proposal is procompetitive and generally reflects the evolving industry structure that affords odd-lot orders highly efficient and price superior execution services. The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act [6] in that the revised odd-lot pricing procedures should increase the quality and speed of execution of odd-lot limit orders. As a result of the proposal, customers should receive a more timely exeuction of their odd-lot limit orders because the orders will be executed at the limit price when there has been a full lot transaction in the primary market, for purposes of Rule 227, or the New York market, for purposes of Rule 229, at the limit price rather than when the limit price is passed. The proposal, therefore, should facilitate the execution of odd-lot limit orders on the Exchange. In addition, the Commission notes that the proposal is substantially similar to revised odd-lot limit order pricing procedures adopted by the New York Stock Exchange [7] and the Midwest Stock Exchange [8] and approved by the Commission.

For the reasons noted above, the Commission believes that the proposed rule change should facilitate the execution of odd-lot orders and should help to ensure that customers receive the best execution of such orders.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, [9] That the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: July 1, 1991.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-16098 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] No differential is charged for such transactions. *See* Securities Exchange Act Release No. 25665 (May 5, 1988), 53 FR 16828 (May 11, 1988).

[4] The New York market includes both the New York Stock Exchange and the American Stock Exchange for purposes of this Rule.

[5] No differential is charged for the majority of odd-lot transactions. Odd-lot stop limit orders, however, are charged a differential. See Securities Exchange Act Release No. 25665, *supra* note 3.

[6] 15 U.S.C. 78f (1988).

[7] See Securities Exchange Act Release 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991) (File No. SR-NYSE-91-03).

[8] See Securities Exchange Act Release No. 28986 (March 18, 1991), 56 FR 12404 (March 25, 1991) (File No. SR-MSE-91-04).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 35—25833B]

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 28, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 22, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*LTV Steel Mining Co. (31-854)*

LTV Steel Mining Co. ("LTV Mining"), P.O. Box 847, Hoyt Lakes, Minnesota 55750, has filed an application for an order under section 2(a)(3) of the Act declaring that it is not an "electric utility company" because it (i) is primarily engaged in a business other than that of an electric utility company, and (ii) sells only a small amount of electric energy.

LTV Mining is a limited partnership principally engaged in mining, beneficiating and selling iron ore pellets to its parent company, LTV Steel Mining Company, Inc. ("LTV Steel"), a wholly owned steel manufacturing subsidiary of The LTV Corporation. The LTV Corporation is engaged, through its subsidiaries, in the production of steel, aircraft products, missiles and electronics, and energy products. All of the partners of LTV Mining are wholly owned subsidiaries of LTV Steel.

LTV Mining owns generating and transmission facilities which were built by its predecessor in interest, Erie Mining Company, to supply the electric energy needs of its mining and beneficiating operation in the area of Hoyt Lakes, Minnesota. From 1980 until 1982, when it was idled, the generating plant supplied all the electric energy requirements of the Hoyt Lakes operation. The plan had sufficient excess capacity for Erie Mining to enter into an Electric Service and Interconnection Agreement with Minnesota Power and Light Company ("MP&L") in 1980. Prior to entering into the Agreement, Erie Mining obtained an order under section 2(a)(3)(A) declaring that it was not an electric utility company.[1] Pursuant to the agreement, Erie Mining provided energy to MP&L for emergency and scheduled outages until 1982.

LTV Mining now plans to restart the generating facility for economic reasons. Subject to receipt of necessary regulatory approvals, LTV Mining, in addition to supplying the normal electric energy requirements of its Hoyt Lakes operation, will sell to MP&L up to a maximum of 75 megawatts of firm power and will provide energy to MP&L in the case of emergency and standby outages, as needed. LTV Mining expects sales of electric power to MP&L to represent approximately 8% of total annual power output and 0.83% percent of LTV Mining's total annual revenues.

*Energy Initiatives, Inc., et al. (70-7815)*

Energy Initiatives, Inc., Camchino Energy Corporation, OLS Power Limited Partnership ("OLS"), OLS Energy-Chino ("Chino") and OLS Energy-Camarillo ("Camarillo") (collectively, "Applicants"), each located at One Gatehall Drive, Parsippany, New Jersey 07054, and each an indirect subsidiary of General Public Utilities Corporation, a registered holding company, have filed an application and amendments thereto under sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

The Commission first issued a notice of November 30, 1990 (HCAR No. 25198) ("November 1990 Notice") of Applicants' proposal for Chino and Camarillo to restructure their respective leases ("Leases") (with General Electric Capital Corporation ("GECC")), energy service agreements ("Energy Service Agreements") (with the State of California, acting through its Department of General Services) and related financing agreements for their qualifying cogeneration facilities. Additionally, the Applicants proposed certain intrasystem loans and capital contributions, amendments to Revolving Credit Agreements ("Credit Agreements") with GECC and borrowings thereunder.

Applicants subsequently amended the application ("Amendment"), to request additional authorization for Acquisition Corp., the intermediary holding company between OLS and Chino and Camarillo, to enter into a pledge agreement ("Pledge Agreement") pledging the stock of Chino and Camarillo to secure the obligations of Chino and Camarillo under their respective Credit Agreements with GECC. The Pledge Agreement will also secure the obligations of Chino and Camarillo under their respective and restructured Energy Service Agreements, Leases and related agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-16100 Filed 7-5-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Holding Co. Act Release No. 20884 (Jan. 11, 1979).

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular 21-20A; Supplier Surveillance Procedures; Notice of Availability

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of proposed, Advisory Circular (AC) 21-20A, Supplier Surveillance Procedures for review and comments. The proposed AC 21-20A provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

**DATES:** Comments submitted must identify the proposed AC 21-20A File Number PO-200-0004, and be received by October 2, 1991.

**ADDRESSES:** Copies of the proposed AC 21-20A can be obtained from, and comments may be returned to, the following: Federal Aviation Administration, Aircraft Certification Service, Aircraft Manufacturing Division, Production Certification Branch, AIR-220, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Andrew Lown, Federal Aviation Administration, Aircraft Manufacturing Division, Production Certification Branch, AIR-220, room 333, 800 Independence Avenue SW., Washington, DC 20591, phone (202) 267-8361.

**SUPPLEMENTARY INFORMATION:**

### Background

The proposed AC 21-20A provides information and guidance concerning surveillance of suppliers to U.S. production approval holders (PAH) by the PAH and the Federal Aviation Administration. Further, this AC includes procedures which supplement bilateral airworthiness agreements pertaining to certification of components manufactured outside the United States.

### Comments Invited

Interested persons are invited to comment on the proposed AC 21-20A listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21-20A may be examined, before and after the comment closing date, in room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

Issued in Washington, DC on July 1, 1991.

**Dana D. Lakeman,**

*Assistant Manager, Aircraft Manufacturing Division.*

[FR Doc. 91-16082 Filed 7-5-91; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

## Environmental Impact Statement: Charleston County, SC

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

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to amend the September 3, 1987 notice which announced that an environmental impact statement would be prepared for the replacement of the existing John P. Grace Memorial Bridge over the Cooper River in Charleston County, South Carolina. The scope of the statement is being broadened to include the ultimate replacement of both the Grace Memorial and the Silas N. Pearman Bridges.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Myers, Planning & Environmental Engineer, Federal Highway Administration, 1835 Assembly Street, suite 758, Strom Thurmond Federal Building, Columbia, South Carolina 29201, Telephone: (803) 253-3881.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the South Carolina Department of Highways and Public Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the Cooper River Bridges between the city of Charleston and the town of Mount Pleasant. The existing bridges, the Grace Memorial and the Silas N. Pearman bridges, carry U.S. 17 traffic between the two cities. The project would extend from Interstate 26 in the city of Charleston to Magrath Darby Drive in the town of Mount Pleasant, a distance of about three miles.

Improvements to the corridor are considered necessary to adequately accommodate the existing and projected traffic demand. Alternatives under consideration include taking no action, implementing transportation system management policies, replacing the structures at essentially the same location, and an alignment that begins along the existing corridor in Mount Pleasant then diverges from the existing corridor at Drum Island and would tie into Interstate 26 about 2,000 feet from its terminal interchange with U.S. 17. A financial feasibility study is underway to consider various means of funding the project.

Coordination will be continued with appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public hearing will be held for which public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 26, 1991.

**Robert J. Probst,**

*Division Administrator, Columbia, South Carolina.*

[FR Doc. 91-16111 Filed 7-5-91; 8:45 am]

BILLING CODE 4910-22-M

## National Highway Traffic Safety Administration

## Petition for Exemption From the Vehicle Theft Prevention Standard; BMW of North America, Inc.

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

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

**SUMMARY:** This notice grants in full the petition by BMW of North America, Inc. (BMW) for an exemption from the parts marking requirements of the vehicle theft prevention standard for the BMW Carline 8 for Model Year (MY) 1992. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device that the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements. Therefore, the agency grants the petition.

**DATES:** The exemption granted by this notice will become effective beginning with the 1992 model year.

**SUPPLEMENTARY INFORMATION:** On January 25, 1991, this agency received a submission from BMW of North America, Inc. (BMW) requesting an exemption from the parts marking requirements of the vehicle theft prevention standard from the BMW 850i. On February 11, 1991, NHTSA asked BMW to clarify whether it was petitioning for an exemption for the 850i model or the entire BMW Carline 8. The agency cited 49 CFR 543.5(a) that provides a manufacturer may petition for an exemption for an entire car line but not for specific models in a line. By a letter faxed to the agency on February 11, 1991, BMW requested that its submission for exemption be applied to the MY 1992 Carline 8.

Upon reviewing BMW's petition for exemption, the agency noted that BMW did not completely address 49 CFR 543.6(a) (4) and (5), and 543.6(b). These sections require manufacturers to provide reasons for their belief that the

antitheft device will be effective in reducing and deterring motor vehicle theft, and for its belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541. Compliance with these sections is achieved by providing a written discussion that includes any statistical data available to the manufacturer that form a basis for its belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or similar, line which have parts marked in compliance with part 541. To comply with § 543.6(b), the manufacturer must provide an explanation of its belief that the data submitted are sufficiently representative and reliable to warrant the agency's reliance upon them.

On February 25, 1991, the agency asked BMW to provide supplementary information addressing § 543.6(a) (4) and (5), and 543.6(b). On February 28, 1991, the agency received the required supplemental information.

The agency determined that together, the submissions of January 25, 1991, February 11, 1991, and February 28, 1991, constitute a complete petition, as required by § 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Accordingly, February 28, 1991 is the date on which the statutory 120 day period for processing BMW's petition began.

In its petition, BMW included a detailed description of the identity, design, and location of the components of the antitrust device, including diagrams of components and their location in the vehicle. BMW states that the system consists of three lines of defense designed to prevent entry, disable the car, and scare away potential thieves. The antitheft device that will be installed as standard equipment is activated passively. BMW states its proposed antitheft system will make it difficult to impossible for an unauthorized person to enter, drive or tow the vehicle.

The antitheft device features a comprehensive security alarm system and an ignition/fuel system disabling device that is activated by locking the door (either driver or passenger) with a key. When the key is turned 45 degrees, the doors, trunk, and fuel filler door are locked and the alarm system is armed. The alarm monitors the doors, hood, trunk, gloveboxes, ignition switch, and the radio. If the key is not first turned in the driver's or passenger's door lock, the alarm will sound if the doors, hood, trunk, or either of the two gloveboxes are opened, the ignition switch is turned, or the radio is removed. When this happens, the horn will sound, the hazard warning lamps and high beam headlights will flash. After 30 seconds, the alarm will automatically shut off and then rearm itself within 5 seconds. The alarm system has its own separate fuse, so removal of any of the fuses in the fuse block of the engine compartment will not disarm the system. The hood has an inside lock release located underneath the dashboard, and is also tied into the alarm system. Additionally, BMW stated that when the key is removed from the driver's or passenger's door lock after having been turned 45 degrees, the ignition and fuel injection systems are deactivated creating a further no-start condition, immobilizing the car.

The vehicle is also equipped with an electronic odometer that functions as a sensor so that pushing or pulling the vehicle also sounds the alarm. A five meter (or 16.4 foot) delay allows the system to differentiate between actual theft or just being bumped or pushed by another vehicle that is being parked.

BMW stated that the vehicle is equipped with two batteries that are both located in the trunk and covered for security. The electronic control unit for the system is hidden within the vehicle. Cutting, disconnecting, or manipulating system wiring will trigger the alarm. Therefore, if a thief did manage to penetrate to the battery circuit and interrupt it, the alarm systems' memory will trigger the alarm when the circuit is again completed.

Additionally, BMW stated that the trunk can only be opened after the doors are unlocked, and together with the gloveboxes, can also be locked or unlocked using the ignition key in a key lock on the dashboard. The outside door lock and the inside plunger also lock/unlock the trunk and gloveboxes, unless they are already locked via the separate dashboard lock.

The steering/ignition lock is hardened against the grip of a screw, and the housing is reinforced to prevent removal of the lock. When the key is removed, the steering lock has a mechanism that causes the lock to instantly engage, preventing steering wheel movement without any additional action. BMW states that the steering lock cannot be broken by forcing the steering wheel because a clutch in the steering drive is designed to slip long before torque sufficient to break the lock can be administered. The automatic transmission model has an ignition/transmission interlock that prevents ignition key removal unless the shift is in park, and prevents movement of the shift unless the key is first turned in the lock.

BMW states that the inside locking mechanism operates by means of a vertical plunger on each door, and that the plunger on the driver's door overrides the other plunger. In the event of an accident, an inertia switch will automatically unlock all doors. The same key operates door locks and the ignition/steering lock, and can be inserted in a keyhole in either direction. To prevent locking the keys in the car upon exiting, the driver's door can only be locked with a key after it is closed. This key also locks the passenger door, and if the door is open at the time of locking, it locks when closed. The locks in both doors have two position cylinders—OFF and 45 degrees. When the key is turned 45 degrees, the central locking system locks the vehicle doors, the trunk and fuel filler door, and arms the alarm system. If the driver holds the key in the 45 degree position, any open windows and the sunroof close. If the key is released before the windows fully close, window movement instantly stops. BMW also states that a pressure-sensitive drive system instantly stops and reverses window and sunroof movement if resistance is encountered.

BMW describes the key for Carline 8 as being unique in that it has the equivalent of four rows of teeth, making the locks almost impossible to pick and the keys impossible to duplicate on the open market. Special key blanks, key cutting machines, and a unique owner's key code are necessary to duplicate a key. BMW states that distribution of key blanks, machines, and codes will be closely controlled and new keys will only be issued to authorized persons. Additionally, the first gate in the door lock keyway is hardened to resist the grip of a screw to prevent use of a slampuller.

BMW states that the car line is equipped with an antitheft radio that will be permanently disabled if removed from the vehicle unless a 5-digit reactivation code is manually keyed into the radio. A warning lamp on the face of the radio will light up when the ignition key is removed and any tampering with the radio will be indicated by a beeping sound emitted by the radio. Decals describing the antitheft radio are placed on the windows to deter thieves.

BMW states that an LED warning lamp on the center console which is visible from outside of the vehicle informs the driver of the arming status of the alarm/no-start systems. Upon return to the operator's vehicle, the warning lamp informs the operator if a

theft attempt has been made, or if a door, hood or trunk is not completely closed. It also indicates if there are any problems with the system. Additionally, BMW states that the vehicle's diagnostic umbilical contains extra circuits which when plugged into the vehicle diagnostic machine at the dealership not ony pinpoints problems with the antitheft system, but also indicates whether an illicit entry was attempted and the location of the attempt.

As a complementary feature to the passive system, the operator may manually arm another alarm system and deactivate the vehicle's ignition/fuel systems so that a thief would not be able to start the engine and steal the vehicle. This active system is armed by the driver keying in a 4-digit code into a computer built into the dashboard.

BMW addresses the reliability and durability of the BMW antitheft system by including a list of national and international standards for which this system has been tested and found in compliance. This list includes various environmental tests and a Swedish regulation that requires door and ignition locks to be able to resist commonly available tools for a minimum period of 5 minutes in attempted forced entries. BMW uses the proposed system's conformance to these standards as support for the likely effectiveness of the system in reducing and deterring theft.

BMW noted that NHTSA's February 1986 Report to Congress indicates that the first year's theft rate for new introductions are generally lower because the demand for replacement parts is relatively small. BMW believes that this finding applies to its Carline 8 and that theft rates will generally be lower because of the limited total sales of these vehicles. Additionally, BMW believes that most of this car line will be stolen for the value of the whole car, not its parts. BMW stated that since parts marking seeks to deter thefts of automobiles for their parts, whereas antitheft devices deter all thefts, BMW believes that its antitheft system "should be considerably more effective" in reducing and deterring theft than parts marking.

BMW compares its antitheft system to similar systems which have previously been granted exemptions from the agency. It compared its proposed system to systems installed in the Toyota Cressida, Supra, Lexus LS400, and ES250, the Mazda 929 and RX-7, the Honda Acura NS-X, the Nissan Maxima, and 300ZX. BMW believes that its analysis reveals that its system is equivalent to, or has more extensive features than all of the compared systems previously granted an exemption by the agency. The agency believes that the BMW antitheft device is comparable to the systems on the cited car lines.

BMW states that it conducted an analysis of NHTSA's Final Passenger Motor Vehicle Theft Data for MY's 1983–1989 Toyota, Mazda, and Nissan vehicles. Its analysis measured thefts prior to installation of any antitheft systems and after installation of any antitheft systems. According to BMW, the NHTSA data showed that during this seven year period, there was a decline in the thefts per thousand vehicles produced. As examples, BMW stated that the Nissan 300ZX went from a 1983/84 theft rate of 8.74 per thousand vehicles produced to a 1989 rate of 5.15; the Mazda RX-7 went from a 1983/84 rate of 12.11 to a 1989 rate of 6.09; and the Toyota Supra went from a rate of 15.16 in 1983/84 to a 1989 rate of 11.79.

BMW stated that this trend is buttressed by relative theft claim frequency data from the Highway Loss Data Institute (HLDI). HLDI's insurance theft reports, which show a comparison of the number of claims per thousand insured vehicles per year for 1984–1989 Toyota, Mazada, and Nissan vehicles, indicate that claims were fewer and that each manufacturer substantially reduced its theft rate after installation of antitheft devices. As examples, BMW stated that the Toyota Supra went from a 1984 claim rate of 36.1 per thousand insured vehicles per year to a 1988 claim rate of 1.7; the Mazda RX-7 went from 21.1 in 1984 to 5.5 in 1988; and the Nissan 300ZX went from 22.7 in 1984 to 17.1 in 1988.

For these reasons, BMW believes that the antitheft system proposed for installation on its Carline 8 is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of part 541.

Based on the information provided in BMW's Carline 8 petition, the agency believes that the antitheft system proposed for installation in Carline 8 for MY 1992 is likely to be as effective in reducing and deterring theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). Further, the agency believes that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): Passive activation, attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unathorized persons; preventing operations of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided on its device. This information included a description of reliability and functional tests conducted by BMW for the antitheft system and its components. The functions and design of the BMW antitheft device is similar to those of other devices, such as that on the Nissan 300ZX, Toyota Cressida, and Mazda RX-7 that the agency previously has considered likely to be at least as effective as complying with part 541 would be.

For the foregoing reasons, the agency hereby exempts the MY 1992 BMW Carline 8 in whole from the requirements of 49 CFR part 541.

If BMW decides not to use the exemption for the Carline 8, it should formally notify the agency. If it so decides, these car lines must be marked according to the requirements under 49 CFR 541.6 and 541.5 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in issuing part 543 to require the submission of a modification petition for every change in the components or the design of an antitheft device. The significance of many such changes would be *de minimis*. Therefore, NHTSA suggests

that if BMW contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a proposal to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: June 28, 1991.

**Howard M. Smolkin,**

*Executive Director.*

[FR Doc. 91-16083 Filed 7-5-91; 8:45 am]

BILLING CODE 4910-59-M

## Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. Theodore Sonde submitted a petition dated April 26, 1991, requesting NHTSA to open a defect investigation concerning the rubbing of a rear tire on the wheel well of his 1989 Dodge Daytona vehicle.

The agency is authorized to order manufacturers to recall and repair vehicles, or items of equipment, when its investigation indicate they contain serious safety-related defects. It can act only when such defects appear in a large group of vehicles and these defects present an unreasonable risk. It cannot act on isolated problems or disputes between individual owners and dealers or manufacturers.

Enclosed in the petitioner's letter was a Chrysler Technical Service Bulletin describing customer concern with front tires rubbing other components. The bulletin stated, "The surfaces contacted by the tires are considered friendly surfaces (smooth and not abrasive), which do not affect the service life of the tire. Since this condition causes no damage and only occurs during extreme and infrequent driving conditions, no attempt should be made to repair." This bulletin concerns front tires and does not indicate any potential problem with the rear tire on the petitioner's vehicle.

With respect to the rubbing of the tire on the inside of the left rear wheel well of the 1989 model Dodge Daytona, the agency has examined both front and rear wheel wells of a similar vehicle. No evidence of tire rubbing was apparent and there was no evidence of aggressive projections or other surfaces which might score or harm the sidewalls of a tire.

A search of NHTSA's computerized complaint file disclosed no other reports of problems similar to the petitioner's in the Dodge Daytona. In consideration of the available information, we have concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a defect may exist does not appear to be warranted. Therefore, the petition was denied.

**Authority:** Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1991.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 91-16134 Filed 7-5-91; 8:45 am]

BILLING CODE 4910-59-M

# DEPARTMENT OF THE TREASURY

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 1, 1991.

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. Savings Bonds Division**

*OMB Number:* New.

*Form Number:* None.

*Type of Review:* New Collection.

*Title:* U.S. Savings Bonds National Market Research Project Consumer Information Survey.

*Description:* This project will be used to determine consumers' baseline product awareness, extent of ownership, savings habits, demographics and to develop consumer profiles. Information will be used for increased productivity, more responsive service and better management of the U.S. Savings Bond Division. Respondents include current purchasers/owners and potential customers.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,200.

*Estimated Burden Hours Per Response:* 20 minutes.

*Frequency of Response:* Other (One-time).

*Estimated Total Reporting Burden:* 400 hours.

Clearance Officer: William L. McCarney (202) 634-5295, U.S. Savings Bonds Division, Room 219 Vanguard Building, 1111—20th Street, NW., Washington, DC 20226.

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. 91-16105 Filed 7-5-91; 8:45 am]

BILLING CODE 4810-40-M

## Office of the Secretary

## List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

| | |
|---|---|
| Bahrain | Oman |
| Iraq | Qatar |
| Jordan | Saudi Arabia |
| Kuwait | Syria |
| Lebanon | United Arab Emirates |
| Libya | Yemen, Republic of |

Dated: June 27, 1991.

**Kenneth W. Gideon,**

*Assistant Secretary for Tax Policy.*

[FR Doc. 91-16106 Filed 7-5-91; 8:45 am]

BILLING CODE 4810-25-M

## Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on July 30 and July 31, 1991, of the following debt management advisory committee: Public Securities Association, Treasury Borrowing Advisory Committee.

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on July 30 and the preparation of a written report to the Secretary of the Treasury on July 31, 1991.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: July 1, 1991.

**Jerome H. Powell,**

*Assistant Secretary (Domestic Finance).*

[FR Doc. 91-16104 Filed 7-5-91; 8:45 am]

BILLING CODE 4810-25-M

# Sunshine Act Meetings

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

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 DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, July 9, 1991, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum re: Policy Statement on Collateralized Letters of Credit and Collateralized Put Obligations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 2, 1991.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 91–16217 Filed 7–3–91; 9:30 am]

BILLING CODE 6714-0-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Tuesday, July 9, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

**Note.** Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Office of Inspector General:

Audit Report re:
- Cimarron Federal Savings and Loan Association, Muskogee, Oklahoma, Case Number: SWP–007c (Memo dated June 11, 1991)

Audit Report re:
- Metropolitan Federal Bank, FSB, Fargo, North Dakota, Case Number: C–342c (Memo dated June 3, 1991)

Audit Report re:
- Pacific Southwest Bank, FSB, Corpus Christi, Texas, Case Number: SWP–022c (Memo dated June 3, 1991)

Audit Report re:
- Texas Trust Savings Bank, FSB, Horseshoe Bay, Texas, Case Number: SWP–023c (Memo dated May 23, 1991)

Audit Report re:
- Inventory Closing Procedures, San Jose Consolidated Office (Memo dated June 14, 1991)

Audit Report re:
- The Seamen's Bank for Savings, FSB, New York, New York (4180) (Memo dated June 13, 1991)

Audit Report re:
- Texas National Bank, El Paso, Texas (4223) (Memo dated June 13, 1991)

Audit Report re:
- Report on the Limited Review of FSLIC, Resolution Fund Prepayments (Memo dated May 24, 1991)

Audit Report re:
- IS Audit of the Atlanta Consolidated Office (Thrift) (Memo dated June 14, 1991)

Audit Report re:
- Audit Report on the Employee Relocation System (Memo dated June 14, 1991)

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 2, 1991.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 91–16218 Filed 7–3–91; 9:30 am]

BILLING CODE 6714-0-M

## FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Wednesday, July 10, 1991.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposals regarding the acquisition of computer equipment within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 3, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-16215 Filed 7-3-91; 9:28 am]

BILLING CODE 6210-01-M

---

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Friday, July 12, 1991.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 3, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-16294 Filed 7-3-91; 3:19 pm]

BILLING CODE 6210-01-M

---

**INTERNATIONAL TRADE COMMISSION**

**USITC SE-91-19**

**TIME AND DATE:** Wednesday, July 10, 1991 at 12:00 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 731-TA-522 (Preliminary) (Minivans from Japan)—briefing and vote.
6. Any items left over from previous agenda

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 252-1000.

Dated: July 2, 1991.

**Kenneth Mason,**

*Secretary.*

[FR Doc. 91-16216 Filed 7-3-91; 9:29 am]

BILLING CODE 7020-02-M

---

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

Institute of Museum Services

Notice of Meeting

This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

**TIME AND DATES:** 3 to 5 p.m.—Thursday, July 25 and 9 to 3 p.m.—Friday, July 26th, 1991.

**STATUS:** Open.

**ADDRESS:** State Capital Building, Old Assembly Chambers, Carson City, Nevada 89710.

**ADDRESS:** W.D. May Museum Auditorium, Rancho San Rafael, 1502 Washington Street, Reno, Nevada 89503.

**FOR FURTHER INFORMATION CONTACT:** William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0536.

**SUPPLEMENTARY INFORMATION:** The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meetings of July 25 and 26, 1991 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510—1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536, TDD (202) 786-9136 at least seven (7) days prior to the meeting.

NATIONAL MUSEUM SERVICES BOARD

*July 25, 1991 Meeting Agenda*

I. Panel Presentation on Small, Minority, Urban & Rural Museums

*July 26, 1991 Meeting Agenda*

I. NMSB Chairman's Report & Approval of Minutes of April 26, 1991 Meeting
II. IMS Director's Report
III. Agency Agenda Reports
  A. IMS Appropriations Issues.
  B. IMS Program Reports.
  C. IMS Public Affairs.
  D. IMS Legislative Issues.
IV. IMS Issues Other—Open Agenda

Dated: July 2, 1991.

**Linda Bell,**

*Director of Policy Planning and Budget, Institute of Museum Services.*

[FR Doc. 91-16293 Filed 7-3-91; 3:18 pm]

BILLING CODE 7036-01-M

---

**RESOLUTION TRUST CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the FDIC open session that begins at 2:00 p.m. on Tuesday, July 9, 1991 to consider the following matters:

Summary Agenda: None.

Discussion Agenda:

A. *Memorandum re:*
Proposal to provide a limited loss guarantee to private lenders financing the sale and site improvement of RTC-owned unimproved residential land.

B. *Memorandum re:*
Proposal to amend the Division of FSLIC Operations' (DFO) policy on the sale of real estate property covered under the Financial Assistance Agreements between financial institutions and the FDIC as Manager of the FSLIC Resolution Fund and its delegations of authority. Now that DFO is organizationally a part of RTC, staff recommends applying the current RTC real estate sales policy to DFO transactions. RTC's policy requires: (1) Appraisals at least every two years, and (2) reliance upon brokers, auction firms and other professionals for marketing and sales.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416-7282.

Dated: July 2, 1991.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 91-16222 Filed 7-3-91; 10:16 am]

BILLING CODE 6714-01-M

federal register

Monday
July 8, 1991

Part II

# Department of Health and Human Services

## Office of Refugee Resettlement

Request for Applications for Fiscal Years 1991 and 1992 Discretionary Grants Program for Services to Refugees; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

### Request for Applications Under the Office of Refugee Resettlement's Fiscal Year 1991 or 1992 Discretionary Grants Program for Services to Refugees. [1]

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice.

**SUMMARY:** The Office of Refugee Resettlement (ORR) announces that competing applications will be accepted for grants pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) as amended by section 412 of the Refugee Act of 1980 (Pub. L. 96–212), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above; and the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605).

Grants made under this program announcement are subject to the availability of funds for support of these activities. Grants in the approximate aggregate amount of $850,000 are expected to be awarded in the 4th quarter of Fiscal Year 1991. Project periods vary by program area but will extend no longer than three years for new applications. This announcement contains forms and instructions for submitting an application.

**CLOSING DATE:** The closing date for submission of applications to be considered for FY 1991 is August 18, 1991.

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, or those paroled as refugees or asylees under INA section 212(d)(5), eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

**FOR FURTHER INFORMATION CONTACT:** Carmel Clay Thompson, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone: (202) 401–4560.

**SUPPLEMENTARY INFORMATION:**

### Part A: General Information

*1. Legislative Authority*

Section 412(c)(1)(A) of the INA authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—* * * (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental heath) services, social services, educational, and other services." Additionally, INA section 412(a)(4)(A)(i) states "In carrying out this section, the Director, the Secretary of State, and any such other appropriate administering official are authorized—(i) to make loans, * * *."

*2. Agency Goals*

The Director has established a broad agency goal of promoting innovative program design, within the framework of joint public-private partnerships, in response to the challenge of reducing welfare dependency and advancing the attainment of economic self-sufficiency among refugees. To this end, ORR announces three new and separate program areas:

Program Area 1, *National/Regional Conferences*, supports the efforts of organizations and non-profit research and public policy institutions to strengthen the ability of refugee communities to pursue more effectively the goal of self-sufficiency by convening national and/or regional meetings which have this objective as their purpose.

Program Area 2, *Ethnic Community-Based Organizations*, is designed to strengthen the role of ethnic community-based national or regional organizations and acknowledged ethnic leadership vis a vis refugee communities at risk of long-term welfare dependency. ORR's goal is to promote strategic partnerships among refugee community leaders and MAAs to give support and direction to ethnic communities facing problems in attaining self-sufficiency.

Program Area 3, *Self-Employment/Micro-Enterprise Development*, provides funding to enable successful applicant agencies to develop and administer self-employment or micro-enterprise loan programs which would make loans—in sums not to exceed $5,000—to refugees who have been, or currently are, engaged in an activity designed to generate income, regardless of its size. This program area also provides for technical assistance for micro-enterprise development to refugee entrepreneurs receiving the loans, as well as to the agencies funded under this announcement to coordinate and share their experiences in developing and administering refugee micro-loan funds. The targeted population for these loans may include refugees who are receiving public assistance, or are at risk of receiving public assistance, and who lack the financial resources, credit history, or personal assets to otherwise qualify for small loans through standard commercial institutions. Only refugees who have arrived in the United States within the five year period preceding enrollment in the project are eligible to participate.

Secondarily, ORR is interested in seeing the extent to which this initiative may result in the growth of micro-enterprise in refugee communities and the expansion of entrepreneurial skills and expertise among refugees.

*3. Eligible Applicants*

Eligible applicants for Program Areas 1 and 3 are States and public or private, non-profit organizations and institutions. Eligible applicants for program area 2 are public or private, non-profit organizations and institutions with a regional or national focus that represent a single refugee ethnicity, or local non-profit organizations which represent consortia of community-based organizations or Mutual Assistance Associations (MAAs). If a consortium applicant includes other types of agencies among its membership, the single organization identified to be the grant recipient with primary administrative and fiscal responsibilities must be a non-profit organization.

*4. Availability of Funds*

ORR expects to award approximately $850,000 in the fourth quarter of Fiscal Year 1991 for new grants. The funding expected to be made available for each Program Area is listed below:

| Program Area | FY 1991 Funds |
|---|---|
| 1. National/Regional Conferences | $80,000 |
| 2. Ethnic Community-Based Organizations | 270,000 |
| 3. Self-Employment/Micro Enterprise | 500,000 |

Under Program Area 1, approximately $80,000 will be made available. No single grant award will exceed $10,000 for an individual conference or meeting. ORR estimates that these funds will

support between eight and sixteen grants.

Under Program Area 2, approximately $270,000 will be made available. ORR anticipates awarding a maximum of five grants, at a funding level average of $54,000, but no higher than $110,000 for each award.

Under Program Area 3, approximately $500,000 will be made available. ORR anticipates awarding grants for a maximum of $200,000 each.

The director reserves the right to award more or less than the funds described above in the absence of worthy applications or in such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be requested to reduce the scope of selected projects to accommodate the level of assistance provided.

*5. Prohibition on the Use of Funds*

ORR will not fund projects where the role the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This does not bar subgranting or contracting for specific services or activities.

*6. Project Periods*

Projects will be approved on a competitive basis for a one-year period for Program Area 1 and for three-year project periods for Program Areas 2 and 3. Budget periods for all three Program Areas will be limited to 12 months each. Continuation applications for Program Areas 2 and 3 will be entertained subsequently on a non-competitive basis, based on availability of funds, grantee's performance, continued need, and the best interest of the Government.

*7 Number of Projects in Application*

Each application must be for a single Program Area described in this announcement (although proposed activities may be located in several communities or targeted areas), and this project must be identified clearly as responding to one of the Program Areas described in this announcement. Applicants must submit separate applications if they propose to apply for more than one Program Area.

ORR does not anticipate approving the funding of applications which propose to sub-grant or contract all or most of the proposed activities under these three initiatives to an unrelated entity.

*8. Definition of Terms*

For purposes of applications under this announcement, the following definitions apply:

*Business* is any lawful activity that generates income regardless of its size.

*Conference* is a symposium, convention, large group meeting, seminar, or any other organized and formal meeting lasting one or more days where people assemble to exchange information and views or explore or clarify a defined subject, problem, or area of knowledge.

*General program income* refers to all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support.

*Peer borrower groups* are comprised of several prospective loan fund borrowers, each of whom is developing a separate micro-enterprise. Funds typically make loans to a group of people who collectively determine which member of the group will receive a loan and in what order. Members provide technical assistance and support to each other, and the loan repayment record of each member may influence the group's ability to receive future loans.

*Self-sufficiency* is, minimally, a condition whereby individuals or families do not require or qualify for financial support in the form of public assistance, by reason of earned income.

*Micro-enterprise funds* consist of small amounts of credit, generally in sums less than $5,000, for low-income entrepreneurs or potential entrepreneurs who typically have few personal assets, little savings, and do not qualify for standard commercial loans.

**Part B: Description of Program Areas**

*Program Area 1. National/Regional Conferences*

Funding is available for conferences convened for the purpose of assembling national and/or regional representatives of the following:

(1) Community-based organizations in order to bring the combined energies of these communities to bear on problems related to refugee domestic resettlement and refugee self-sufficiency; or

(2) Service providers and other appropriate persons involved in refugee resettlement issues to explore resource development and/or share professional expertise; or

(3) Members of educational institutions or non-profit research and public policy institutions interested in examining specific issues related to refugee resettlement; or

(4) Any combination of the above groups and purposes.

An example of the first type might be a meeting of refugee MAAs from a specific geographic region of the U.S. convened to examine problems of accessing mainstream services by a particular ethnic refugee community. An example of the second type might be a meeting of refugee mental health professionals and para-professionals to explore refugee access to professional mental health services. An example of the third type might be a symposium of academicians, policy-makers and interested members of refugee communities meeting to explore, exchange and disseminate information on broad and continuing questions and problems of refugee resettlement.

The focus and activities of the proposed meeting must be related to domestic issues.

Proposals which would provide goods or services to the Federal Government, ACF/ORR, or any other Federal entity, including goods or services related to the support of national or regional conferences, are not solicited under this Program Area and will not be funded.

Any combination or consortium of qualified organizations may submit a joint application so long as one organization is clearly identified as the recipient with primary administrative and fiscal responsibilities.

The following restrictions apply in this program area:

(1) ORR funds may not exceed sixty-five percent (65%) of the projected total cost of the conference or meeting. Since conference fees may be generated as program income, this matching requirement is subject to the policies and requirements of 45 CFR part 74, subpart F as follows:

Program income from conference fees may be used to count toward satisfaction of cost-sharing, in accordance with 45 CFR 74.42(d), the Cost-sharing or matching alternative.

All other program income will be considered accounted for under alternative (c), the deductive alternative, and may not be counted toward satisfying grantee's cost-sharing requirement.

In accordance with 45 CFR part 74, subpart G—Cost Sharing or Matching—a cost-sharing requirement may be satisfied by the value of third-party, in-kind contributions applicable to the period to which the cost-sharing requirement applies. Additionally, the travel and expenses contributed by conference presenters may be included in calculating the cost share. However, travel and expenses of conference participants may not be counted toward satisfying grantee's cost-sharing requirement.

(2) Conferences and meetings funded under this announcement may not be

used for the purpose of lobbying, or otherwise engaging, political entities by participants or presenters to influence legislative or administrative actions.

*Program Area 2. Activities of Ethnic, Community-Based Organizations To Address Problems of Self-Sufficiency*

The purpose of this program area is to assist ethnic community-based organizations, comprised mainly of refugees or former refugees, proposing to conduct regional or national, ethnic-specific activities to address problems of refugee self-sufficiency that reach across State boundaries and therefore do not fall under the purview of the State-administered refugee program. Such organizations are encouraged to make application to ORR for funds in support of appropriate activities that are consistent with this goal. Successful applicants should function as catalysts in bringing together key communities and local ethnic leadership to work on vital issues affecting the economic self-support of refugees who share the same national heritage and culture.

Activities should be designed to explore ways of improving the economic situation of refugees who have not yet become financially self-supporting. Activities may also be proposed that coalesce a broad grouping of ethnically-related communities into a national coalition. Other allowable activities include: ethnic community development and public education, information dissemination on ethnic-specific issues, leadership training, resource development, employment-related activities which are not State-specific and which are not already funded under a State refugee program, the convening of a national or regional meeting to examine problems of self-sufficiency and to develop consensus on appropriate actions to be taken to reduce welfare dependency, and the development or translation of ethnic-specific publications.

Applicants must demonstrate a need for the special focus of their proposed activities; for example, where issues of self-sufficiency are concerned, applicant must demonstrate that the targeted community has exhibited patterns of long-term welfare dependency and/or problems associated with achieving financial self-support.

Activities should be designed to supplement and not supplant the existing array of refugee services available in the community.

Applicants must demonstrate existing support for their agency and their proposed project from a local, regional or national base. This support should extend across the regional or national lines in which the proposed activities are to take place. Proposed activities should be ones that are not normally funded under the State refugee program.

Applicants shall give assurance that their governing bodies, boards of directors, or advisory bodies are representative of the communities being served and have both male and female representation.

*Non-allowable activities:* Funds will not be awarded to applicants who propose to engage in activities of a distinctly political nature or which are designed to promote the preservation of a specific cultural heritage, or who propose to set up projects with an international objective.

*Program Area 3. Self-Employment/ Micro-Enterprise Development*

The purpose of these awards is to enable successful applicants to establish refugee loan funds, using either ORR grant funds or funds obtained from commercial lending institutions, or a combination of both to provide and manage small loans to individuals. The intended purpose of the loan funds is to address gaps in the existing capital market for micro-entrepreneurs and prospective micro-entrepreneurs, that is, small, individual entrepreneurs seeking to expand their income-generating capacity. Examples of micro-enterprises which might qualify for this type of loan or business credit are: Home sewing businesses, lawn care services, or auto mechanic services. Accordingly, loan funds may be needed to purchase tools, small equipment or machines for home sewing or quilting, or lawn care equipment.

Eligibility for individual loan applicants is limited to those who have arrived in the United States within the five years preceding enrollment in the project. Applicants are encouraged to target a refugee population that has arrived in the United States within the two years preceding project enrollment.

ORR funds may be used for the administrative costs associated with managing and servicing the loan portfolio, and for the provision of entrepreneurial technical assistance to both loan recipients and to grantee intermediary agencies. Grantees may propose a model in which one or several of these activities will be provided by a sub-grantee.

Applicants for grants should design a project under which the grant funds may be utilized multiple times as loans to individuals are repaid during the grant period. The average anticipated loan period should be defined, along with the maximum loan period.

General program income, in the form of interest earned on a loan principal, may be retained by the recipient during the period of grant support and used for costs which are in addition to allowable costs of the project so long as these costs further the objectives of the grant and the Federal statute under which the grant was made. Specifically, program income of this type may be used to expand the number of micro-enterprise loans to be made available to the client population, in accordance with 45 CFR 74.42(e), Additional costs alternative.

Applicants must include in the project design a schedule for collection and liquidation of all loans and reversion of repaid loan equity to the Federal Government within a three-year period after grant expiration.

ORR encourages the submission of applications which propose to establish a loan fund based on a peer borrowing group model. (Applicants interested in exploring peer group borrowing may wish to investigate several models that are current in the field of micro-enterprise development, including that of the Grameen bank of Bangladesh, which successfully provide credit to very small enterprises.)

ORR also encourages the submission of applications which propose to establish a partnership with a commercial bank or other traditional lending institution whereby Federal grant money will be leveraged by commercial loans, and refugee borrowers will have the opportunity of establishing credit-worthy histories with traditional lending institutions. To that end, ORR does not encourage the use of below-market level rates of interest for the loan funds. If appropriate, applicants should include letters of intent or interest from a commercial bank in their application.

These funds may not be used as venture capital for established businesses that are attempting major expansion, particularly where such business entities may qualify for commercial loans. These funds are also not intended primarily for purposes not related to micro-enterprise development, e.g., for the purchase of an auto for transportation.

Successful applicants will be required to establish an advisory committee with representatives from the local commercial sector and from the refugee community.

ORR intends that the loan programs will be complementary to each other in design and implementation features through technology-sharing to be coordinated by one grantee. That is, ORR intends that successful applicants

will share standardized documents, policies and procedures, and that one grantee will be selected for these coordination activities. For this reason, ORR encourages applicants to build into their project design a description of a formal process to involve other funded grantee agencies—once they have been identified—for sharing information available from existing micro-enterprise projects and from the experience of the projects themselves.

Applicants may propose to provide and manage the program-wide, technology-sharing themselves, or may propose to subcontract this function. Only one project will be funded to carry out the responsibility for this function. Nevertheless, all applicants are encouraged to build this function into the application for funding consideration.

**Application content**

Each application must contain a program narrative that includes a description of the project and project activities, a plan for fiscal and project management, a time table for activities, a project organization chart, a description of staffing, and qualifications of staff. Additionally, applicants should include the following information listed by program areas.

*Program Area 1. National/Regional Conferences*

Applicants should provide a discussion of the following:

- A statement of need, describing the general purpose of the meeting and any secondary objectives or functions;
- The size and proposed duration of the conference;
- The conference design, location, rationale for location, size, and the targeted audience of attendees; the criteria for selecting presenters and invited speakers, if known;
- The major conference personnel (e.g., the conference sponsor and coordinator), and whether conference exhibitors are proposed;
- The tentative agenda;
- The applicant's organizational capability and experience;
- The extent to which refugee communities have been or will be involved in developing the conference's design and agenda;
- Projected results and benefits to refugee communities, with particular attention to the impact on refugee self-sufficiency;
- In addition to budget requirements listed below in part D, the applicant should submit a budget covering total costs for the conference, a breakdown by line item to be funded by ORR, and anticipated program income to be generated. Funds may be used for space rental, travel and subsistence (per diem). If travel is proposed for participants other than presenters, the grantee must provide separate justification and specify the criteria to be used to select certain participants to be eligible for travel stipends or expense reimbursement. Federal funds may not be used for banquet-type food or beverages, entertainment, honoraria or conference fees. Travel stipends may only be paid for individuals incurring actual travel expenses and should be calculated not to exceed actual travel and administrative expenses incurred.

*Program Area 2. Ethnic Community-Based Organizations*

- Any analysis of the need for this project with reference to specific targeted populations;
- A statement of the project goals and objectives;
- A plan of action for specific communities experiencing problems of financial self-sufficiency and outlining the activities to be undertaken by the project to address these problems; If a specific group is targeted, the applicant should specify the needs of this population will be involved in developing the project plan of action;
- Evidence of regional or national community support and commitment to work collaboratively on the project;
- If the applicant is currently a local agency, a description of the projected scope of activities (e.g., regional or national);
- A description of the agency's expertise and managerial experience, to include an organizational plan, list of the Board of Directors, and evidence of incorporation, if applicable;
- A discussion of plans for seeking additional and alternative funding sources after the first year of operation;
- If the project is designed to enhance ethnic national leadership, describe how leaders will be identified and how ethnic communities will be brought into the plan;
- Anticipated results and benefits to local communities.

*Program Area 3. Self-Employment/ Micro-Enterprise Development*

The application should, at a minimum, describe the following:

- An analysis of capital needs and interest in micro-enterprise development of targeted refugee populations;
- The purpose of the project, a description of the types of loans to be made, the types of micro-enterprises to which it will be targeted, and the credit needs these enterprises are anticipated to have;
- A description of the structure, approach or model of the project, e.g., the extent to which loans will be made to individuals or groups; outreach activities; the relationship to any affiliate agencies; provisions for credit enhancements, such as loan loss reserves; performance criteria to be used in evaluating loans and making decisions with intermediaries or commercial lending institutions; a description of the management and operation of the project, and the management and servicing of the loan funds;
- A discussion of the extent to which the applicant proposes to leverage grant monies with other sources of capital for program participants through access to other funding sources or linkage with other financial institutions;
- With respect to loan funds, the anticipated size of the fund and its term (e.g., maximum number of loans and loan size to be made available, interest rates, repayment terms and policies, projected default rates, requirements for loss reserves, candidate screening and lending criteria, application procedures, projected loan activity and the activities for which loans to individuals may be used; and a schedule for the collection and liquidation of all loans and reversion of repaid loan equity to the Federal Government.
- A description of the entrepreneurial technical assistance proposed for refugee loan borrowers (individuals or groups);
- A description of the technical assistance and cross-project coordination and training proposed among grantees establishing and administering the loan programs;
- A profile of the refugees who will be targeted for micro-enterprise development by the applicant, including: projected employment and/or welfare status of client micro-entrepreneurs; qualifying income, length of time in the United States; and the degree to which English language proficiency will be a prerequisite to participation in the project;
- A discussion of the impact of loan funds and business assets on clients' welfare status if the project proposes to target borrowers who are receiving public assistance;
- The extent to which grant monies will be used for administrative purposes;
- A description of the information/ data collection, management procedures and analysis for tracking project milestones, the outlays under the project and of the loan funds, loan repayme its,

profit and loss statements or business reports, site visits, and technical assistance needs of project participants;

• Projected performance, including the estimated number of micro-enterprise loans, dollars invested; the costs associated with creation of a micro-enterprise or job; business survival rates; average income earned; the extent to which participating refugees achieve self-support; the ability of the fund itself to achieve self-sufficiency; and savings to the Federal Government in welfare costs discontinued by project participants due to earned self-employment income;

• Policies and procedures proposed regarding program or grant-related income and its disposition.

**Part C: Criteria for Competitive Review of Applications**

Applications will be reviewed competitively and scored by a review panel of experts in accordance with the HHS Grants Administration Manual and according to the criteria stated below for each program area. The results of the review panel scores and explanatory comments will assist the Director, ORR, in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers, Federal Regional Offices and ACF/ORR officials; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director, ORR.

Specific review criteria are as follows:

*Program Area 1. National/Regional Conferences*

Analysis and statement of need. (15 points)

Appropriateness of goals. (20 points)

Clarity and appropriateness of the conference design, plan of action and time table. (20 points)

Organizational experience with refugee issues and with convening conferences that have an educational focus. (15 points)

Appropriateness and reasonableness of the proposed budget. (15 points)

Appropriateness of proposed participants. (15 points)

*Program Area 2. Ethnic, Community-Based Organizations*

Review Criteria:

Analysis and statement of need. (15 points)

Appropriateness of goals and the extent to which refugee self-sufficiency is a measurable objective of the project. (20 points)

Clarity and appropriateness of the project design, plan of action and time table. (25 points)

Organizational history and track record of service to refugee communities. (10 points)

Evidence of community involvement in the project planning and support for the plan of action. (15 points)

Appropriateness and reasonableness of the proposed budget. (15 points)

*Program Area 3. Self-Employment/ Micro-Enterprise Development*

Overall appropriateness of targeted population, to include, (1) an analysis of capital needs and evidence of refugee interest in micro-enterprise, self-employment projects; and (2) a discussion of the extent to which the project structure, policies and procedures are consistent with the entrepreneurial knowledge base and skill level of the project participants. (25 points maximum)

Organizational management capability and history of experience with either refugees or low-income applicants. Factors to be considered here include the adequacy of the data collection system and the project outcome tracking plan. (30 points maximum)

Clarity and appropriateness of the project design, demonstrating an understanding of the concept of micro-enterprise endeavors, clear and appropriate implementation procedures, a financial plan and a time table. (30 points maximum)

Appropriateness and reasonableness of the proposed budget. (15 points maximum)

Bonus points: (20 points maximum)

Up to ten (10) bonus points may be scored on applications which propose a fund design whereby a portion of ORR grant dollars would reside in an insurance fund with a commercial lending institution, thereby enabling that institution to make the loans from commercial financial resources and to service the micro-loan portfolio.

Up to ten (10) additional bonus points may be scored on applications which propose a project design in which a majority of the refugee borrowers will have arrived in the United States within the two year period prior to enrollment in the project.

**Part D: Application Preparation and Submission**

*1. Availability of Forms*

Attachments contain all of the standard forms necessary for the application for awards under this announcement.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone: (202) 401-4560.

*2. Contents of the Application*

Each application should include one signed original and four additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in attachments E and F.

b. A completed "Budget Information—Non Construction Programs" form (SF-424A).

c. A signed "Assurances—Non-Construction Programs" form (SF-424B).

d. As required by 45 CFR part 93, a signed Certification and Lobbying Disclosure Form.

e. A Project Narrative consisting of the elements described under part B above.

*3. Instructions for Completing Application Package*

The standard forms attached to this announcement must be used to apply for funds under this announcement. It is suggested that the applicant reproduce the forms and type the required information on the copies. If an item on the SF-424 cannot be answered, or does not appear to be related or relevant to the grant being requested, enter "NA" for "Not Applicable."

Applications, including all required attachments, should be sequentially numbered. The total number of pages describing the project narrative should not exceed 20 pages. Copies should be identical to the original application and attachments in the event it becomes

necessary to duplicate them for review purposes.

The original application must be submitted on 8½x11 inch white paper. The applications should be two-holed punched at the top center and fastened separately with compressor slide paper fastener, such as an ACCO clip, or a binder clip. Applications should also include a mailing label for acknowledgment of receipt.

The submission of bound applications, or applications enclosed in binders, is specifically discouraged. Applications should not include organizational brochures or other promotional materials, slides, films, clips, etc. Such extraneous materials will be discarded.

The application should be prepared in accordance with the instructions given with the forms, as well as the specific instructions set forth below:

a. SF–424 "Application for Federal Assistance" (Attachment A).

*Item 1.* For the purposes of this announcement, applications are "non-construction".

*Item 5/6.* The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

*Item 7.* If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status, such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

*Item 8.* For the purposes of this announcement, all applications are new requests.

*Item 9.* DHHS–ACF–ORR.

*Item 10.* The Catalog of Federal Domestic Assistance (CFDA) number for State-administered programs covered under this announcement is 93.026 * * * Refugee & Entrant Assistance. A separate CFDA number for private, non-profit activity has not yet been obtained.

*Item 11.* In addition to a brief descriptive title of the project, indicate for which Program Area funds are being requested. The following letter designations must be used: Program Area 1, Program Area 2 or Program Area 3.

*Item 16.* This program is not covered by E.O. 12372. Check "No".

b. Budget, SF–424A (Attachment B).

Line 21. Use this line and continuation sheets to explain and justify fully the major items included in the budget categories. Provide sufficient detail to enable a determination of allocability, relevance to the project and cost benefits. Additionally, budget justification and detail should be provided for out-of-state travel, all contractual items or activities, and equipment to be purchased wholly or in part with grant funds and which meet the definition of nonexpendable personal property.

c. Assurances—Non-Construction Programs, SF–424B: Fill out, sign and date form found at Attachment C.

d. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: Fill out, sign and date form found at Attachment D.

e. Disclosure of Lobbying Activities, SF–LLL: Fill out, sign and date form found at Attachment D only if lobbying activities have occurred in connection with this application.

f. Project Narrative: In this space, simply refer to Part B above ("Description of Program Areas—Application Content.")

*4. Application Submission*

Prior to mailing the submission, applicants should specifically check to make sure that:

a. The SF–424 is signed.

b. All the sections of the SF–424 and the SF–424A are properly and completely filled out. Please make sure that the designation of the priority area for which you are applying is indicated under item 11 of the SF–424.

c. The SF–424B and all required assurances are signed.

d. The project narrative and required documentation are included.

e. Four copies identical to the original are included.

f. The package is assembled in accordance with the instructions set forth in Part D.2 and 3.

g. A mailing label is included.

Applications must be submitted to ACF by the **CLOSING DATE** specified at the beginning of the announcement. Applications should be mailed to: Administration for Children and Families, Division of Grants Management, OFM/DGM, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

An additional copy of the complete application should be sent to the ORR program office.

Hand-delivered applications will be accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays, on or prior to the established closing date at: Administration for Children and Families, Division of Grants Management, Sixth Floor, 901 D Street SW., Washington, DC 20447.

An application will be considered to be submitted on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered acceptable only if physically received at the above address before close of business on or before the deadline date.

**Note:** In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition. Applications, once submitted, are considered final and no additional materials will be accepted unless specifically requested by ACF.

*5. Application Acknowledgment and Screening*

All applicants will receive an acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9230.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the submission requirements of this announcement. Only applications meeting those requirements will be reviewed and evaluated competitively. Others will be returned to the applicant with a notation that they were unacceptable.

**Part E. Post-Award Information and Reporting Requirements**

The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is

provided, and the terms and conditions of the award.

Grantees will be subject to the provisions of the Standard Terms and Conditions and any Special Terms and Conditions (where the latter are warranted) which will be applicable to the grants.

Recipients under Program Area 1 will be required to report on an annual basis. A final financial report (SF-269) and a final narrative report containing a description of the proceedings of the conference and a summary of the participants' evaluation of the conference will be due no later than ninety days following the completion or termination of the grant. An annual report will be acceptable as a final report when the grant period was one year.

Grantees under Program Area 2 will be required to submit semi-annual progress and financial reports (SF-269) as well as a final progress and financial report.

Grantees under Program Area 3 will be required to submit quarterly progress and financial reports (SF-269) as well as a final progress and financial report.

Grantees are subject to the audit requirements of OMB Circular A-133 or A-128, if the grantee is a State, and should anticipate in their budget request the cost of having an audit performed at the end of the grant period.

Dated: July 1, 1991.

**Chris Gersten,**

*Director, Office of Refugee Resettlement.*

BILLING CODE 4150-04-M

Attachment A

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ . ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| | |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| | |

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment B

OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** – Enter the contribution to be made by the applicant.

**Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** – Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** – Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** – Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** – Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** – Provide any other explanations or comments deemed necessary.

## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Attachment C

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

Attachment D

## RESTRICTIONS ON LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3 The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

_____

Signature

_____

Title

_____

Organization

_____

Date

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District**, *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District**, *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number**, *if known*:

**9. Award Amount**, *if known*:
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

Authorized for Local Reproduction
Standard Form - LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

# DISCLOSURE OF LOBBYING ACTIVITIES
## CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

ATTACHMENT E

## U.S. Department of Health and Human Services

## Certification Regarding Drug-Free Workplace Requirements

## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

*(Continued on reverse side of this sheet)*

**HHS–Certification Regarding Drug-Free Workplace Requirements–continued from reverse page**

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

*Check* ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**Signature**_____ **Date**_____

**Title**_____

**Organization**_____

DGMO Form#2 Revised May 1990

Attachment F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSIONS - LOWER TIER COVERED TRANSACTIONS (To Be Supplied to Lower Tier Participants)**

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions - Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G

## OFFICE OF REFUGEE RESETTLEMENT
## REGIONAL OFFICES

| | |
|---|---|
| Region I | Marilyn Lasky<br>DHHS/ACF<br>John F. Kennedy Federal Bldg.<br>Room 600<br>Boston, MA 02203 |
| Region II | Louis Katz<br>DHHS/ACF<br>26 Federal Plaza, Room 4048<br>New York, NY 10278 |
| Region III | Michael Rolish<br>DHHS/ACF<br>PO Box 8436<br>3535 Market Street, Room 5220<br>Philadelphia, PA 19101 |
| Region IV | Bill Battle<br>DHHS/ACF<br>101 Marietta Tower, Suite 821<br>Atlanta, GA 30323 |
| Region V | Gene Niewoehner<br>DHHS/ACF<br>105 W. Adams Street, 20th Floor<br>Chicago, Illinois 60603 |
| Region VI | Russ Jewert<br>DHHS/ACF<br>1200 Main Tower Building<br>Suite 1700<br>Dallas, TX 75202 |
| Region VII | Larry Laverentz<br>DHHS/ACF<br>601 East 12th Street<br>Federal Building, Room 515<br>Kansas City, MO 64106 |

| | |
|---|---|
| Region VIII | Vo Van Ha<br>DHHS/ACF<br>Federal Ofice Building, Room 1185<br>1961 Stout Street<br>Denver, CO 802-94-3538 |
| Region IX | Dan Baker<br>DHHS/ACF<br>50 United Nations Plaza<br>Mail Stop 351<br>San Francisco, CA 94102 |
| Region X | Bob Burkhart<br>DHHS/ACF<br>2201 Sixth Avenue, M/S RX-70<br>Seattle, WA 98121 |

[FR Doc. 91-16056 Filed 7-5-91; 8:45 am]
BILLING CODE 4150-04-C

federal register

Monday
July 8, 1991

Part III

# Environmental Protection Agency

## Superfund Program; Model CERCLA RD/RA Consent Decree; Notice

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3971-1]

## Superfund Program; Model CERCLA RD/RA Consent Decree

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Agency is publishing today its Interim Model CERCLA RD/RA Consent Decree. This document provides model language for drafting consent decrees for settlements pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"), as amended by the Superfund Reauthorization Act of 1986 ("SARA"), for the performance of remedial design/remedial action (RD/RA). EPA is publishing this document in order to provide wide public distribution of information on this important aspect of Superfund enforcement. The Agency may revise the model based upon experience gained in drafting RD/RA Consent Decrees.

**FOR FURTHER INFORMATION CONTACT:** Sandra Connors, Mail Code LE-134S, U.S. Environmental Protection Agency, Office of Enforcement, Superfund Division, 401 M St. SW., Washington, DC 20460 (202) 382-3110.

Raymond B. Ludwiszewski,

*Acting Assistant Administrator for Enforcement.*

Don R. Clay,

*Assistant Administrator for Solid Waste and Emergency Response.*

Memorandum

Subject: Model CERCLA RD/RA Consent Decree

From: Raymond B. Ludwiszewski Acting Assistant Administrator for Enforcement
Don R. Clay, Assistant Administrator for Solid Waste and Emergency Response
Richard B. Stewart, Assistant Attorney General for the Environment and Natural Resources, U.S. Department of Justice

To: Regional Administrators, Regions I-X

Dated: June 21, 1991.

Attached is the interim final Model CERCLA RD/RA Consent Decree. As discussed below, this document should be used as the basis for fashioning remedial design/remedial action settlements with potentially responsible parties under sections 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. The Model Consent Decree provides boiler-plate language for most provisions in order to standardize CERCLA consent decrees as much as possible and expedite settlements. The United States will commence negotiations with a document which, for most provisions, is the same document the government will insist on in a settlement because it reflects legal and procedural terms that have been found acceptable to both the Agency and the PRPs in a large number of situations.

The philosophy underlying the Model Consent Decree is consistent with that espoused in the CERCLA Timeline prepared as a result of the Superfund Management Review and in the Pre-Referral Negotiations Procedures for Superfund Enforcement Cases. That philosophy is to initiate and conclude RD/RA settlement negotiations as expeditiously as possible and, ideally, within the statutory 120-day special notice moratorium. See CERCLA section 122(e)(2). The goal is to achieve a greater number of settlements in a more expeditious manner, on terms acceptable to the United States and consistent with the intent of CERCLA, thereby permitting more remedial work to proceed. Use of the Model Consent Decree is designed to reduce the time and resources consumed during extensive RD/RA settlement discussions by reducing across the board the number of issues the United States will negotiate with the PRPs. In addition, use of the Model will reduce the amount of time spent on internal government reviews of the document and will promote national consistency.

In future RD/RA negotiations, EPA Regional Offices should provide the PRPs with a proposed consent decree, based on the Model, that reflects site-specific considerations.[1] The Office of Enforcement (OE) and the Office of Solid Waste and Emergency Response (OSWER) will support efforts by Regional Offices and the Department of Justice (DOJ) to draft and negotiate settlement terms that go beyond the Model's provisions in terms of protecting the interests of the United States. The Regions should work with the Department of Justice and, as appropriate, EPA Headquarters to craft site-specific language before sending the draft to the PRPs.[2] When the United States sends the consent decree to the PRPs, the negotiations team should inform the PRPs that many provisions of the consent decree are nationally consistent boiler-plate provisions that the United States does not plan to negotiate.

The Model Consent Decree does not include those provisions that may be necessary to handle the wide-range of special situations which may arise in the context of structuring CERCLA settlements. For example, some settlements may require the inclusion of a covenant not to sue by the United States to *de minimis* defendants. In addition, a trust fund or other PRP funding mechanism may be appropriate in cases involving large numbers of PRPs. The negotiation team members should work with their respective managements to develop language for such provisions. If the provision raises issues of national or precedential significance or if the settlement would otherwise require concurrence by EPA Headquarters, the Region should consult with OE before offering it to or agreeing to it with the PRPs.

In addition, as previously noted, while the presumptions are that the Regions will use the Model as the basis for fashioning settlements and that much of the document is considered to be boiler-plate, Regions have the flexibility to adopt a baseline approach to certain provisions that is more stringent than the Model. Moreover, except as provided below and consistent with current Agency delegations, the Regions may, in conjunction with the Department of Justice, modify provisions of the Model in developing the proposed consent decree in a particular case.

With respect to those provisions of the Model Consent Decree that embody issues of national significance, the Regions must consult with Headquarters before offering or agreeing to any changes that would result in a significant deviation from national policy. The following provisions fall into this category: Access, Contribution Protection, Covenants, Dispute Resolution, Force Majeure, Additional Response Actions (Section VII of the Model Consent Decree), Certification of Completion, Stipulated Penalties (structure of the provision, not the amount of penalties), and Indemnification. The Department of Justice and EPA Headquarters will respond to the Region as expeditiously as possible in order to insure that negotiations are not delayed.

The U.S. EPA Periodic Review provision also involves issues of national significance. However, in recognition of the case-specific evaluation that must be performed with respect to the role and importance of this provision in a given settlement, the Regions are not required to consult with Headquarters with respect to changes in this provision. Among the factors to be considered in determining whether to include this provision are the completeness and reliability of the remedy, the strengths and weaknesses of the liability case against the defendants, and the scope of the covenant not to sue that is given to the defendants in the settlement. The Regions should work closely with the Department of Justice in evaluating these factors and determining the government's final position in this provision in a given settlement.

The attached Model Consent Decree does not include a paragraph identifying the performance standards for the remedy. However, these standards must be identified in the ROD and the SOW and those documents will be attached to the consent decree and incorporated therein. The attorneys and technical staff on the negotiation team both must focus on those

[1] For examples of provisions that must be modified in each case, we direct your attention to the definition of "Site" and Section VI (Performance of the Work by the Settling Defendants). The term "Site" must be carefully defined not only to take into account the work to be performed at the Site but the scope of the covenant not to sue that the United States typically provides the Settling Defendants. In addition, the section of the decree detailing the "Work" must be tailored to take into account the type of remedy that will be implemented at the Site.

[2] If the state will be a party to the consent decree, it is critical for the United States' negotiations team to coordinate with the state's representatives prior to commencement of negotiations with the PRPs.

documents to ensure that the standards are clearly stated and enforceable.

Of course, processing of any final settlements shall be in accordance with current Agency delegations. Nothing in this memorandum should be interpreted as modifying the existing waivers of Headquarters' settlement concurrence authorities that are embodied in the June 17, 1988 memorandum from the Assistant Administrators for the Office of Enforcement and Compliance Monitoring and the Office of Solid Waste and Emergency Response. Moreover, EPA Headquarters will continue its general policy of referring any inquiries to Headquarters from PRPs or their counsel regarding site-specific issues or negotiations back to the appropriate Regional Office or the Department of Justice.

The attached Model Consent Decree and the procedures for its use outlined in this memo shall be applicable to all sites for which special notice letters are issued or a proposed consent decree is sent to the PRPs beginning 60 days after the date of this memorandum. For all other sites, the attached Model Consent Decree is not applicable, and current negotiation positions and schedules will not be affected by this Model. In particular, the Agency will not re-negotiate provisions in on-going or concluded negotiations which were previously agreed to with PRPs or in decrees lodged but not yet entered.

If you have any questions regarding the Model Consent Decree, please contact Sandra Connors in OE (382-3110) or Paul Connor in OWPE (245-3656).

Attachment.

cc:

Donald Elliot, General Counsel
David Ryan, Comptroller
Henry Longest, Director, Office of Emergency and Remedial Response
Bruce M. Diamond, Director, Office of Waste Programs Enforcement
Regional Counsel, Regions I-X
Waste Management Division Directors, Regions I-X

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, MODEL CERCLA RD/RA CONSENT DECREE**

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute a rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

**Table of Contents**

*Model CERCLA RD/RA Consent Decree*

I. Background
II. Jurisdiction
III. Parties Bound
IV. Definitions
V. General Provisions
VI. Performance of the Work by Settling Defendants
VII. Additional Response Actions
VIII. EPA Periodic Review
IX. Quality Assurance, Sampling, and Data Analysis
X. Access
XI. Reporting Requirements
XII. Submissions Requiring Agency Approval
XIII. Project Coordinators
XIV. Assurance of Ability to Complete Work
XV. Certification of Completion
XVI. Emergency Response
XVII. Reimbursement of Response Costs
XVIII. Indemnification and Insurance
XIX. Force Majeure
XX. Dispute Resolution
XXI. Stipulated Penalties
XXII. Covenants Not to Sue by Plaintiffs
XXIII. Covenants by Settling Defendants
XXIV. Effect of Settlement; Contribution Protection
XXV. Access to Information
XXVI. Retention of Records
XXVII. Notices and Submissions
XXVIII. Effective Date
XXIX. Retention of Jurisdiction
XXX. Appendices
XXXI. Community Relations
XXXII. Modification
XXXIII. Lodging and Opportunity for Public Comment
XXXIV. Signatories/Service

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF _____ DIVISION**

**United States of America [and State of _____] Plaintiffs, v. _____, Inc., Defendants.**

**[CIVIL ACTION NO. ]**

**Consent Decree**

**I. Background**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the _____ Superfund Site in _____, _____, together with accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 CFR part 300 (as amended) ("NCP").

C. In accordance with the NCP and section 121(f)(1)(F) of CERCLA, 42 U.S.C. 9621(f)(1)(F), EPA notified the State of _____ (the "State") on _____, 19____ of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

[D. The State of _____ (the "State") has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. 9607, and [list state laws cited in the State's complaint], for: _____.]

E. In accordance with section 122(j)(1) of CERCLA, 42 U.S.C. 9622(j)(1), EPA notified the [relevant Federal natural resource trustee(s)] on _____, 19____ of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff[s] arising out of the transactions or occurrences alleged in the complaint[s].

G. Pursuant to section 105 of CERCLA, 42 U.S.C. 9605, EPA placed the Site on the National Priorities List, set forth at 40 CFR part 300, appendix B, by publication in the **Federal Register** on _____, 19____, ____ FR _____;

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA [or the Settling Defendants, other PRPs at the Site, or the State] commenced on _____, 19____, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 CFR 300.430;

I. EPA [or the Settling Defendants, other PRPs at the Site, or the State] completed a Remedial Investigation ("RI") Report on _____, ____, 19____, and EPA [or the Settling Defendants, other PRPs at the Site, or the State] completed [issued] a Feasibility Study ("FS") Report on _____, 19____;

J. Pursuant to section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on _____, 19____, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at

the Site is embodied in a final Record of Decision ("ROD"), executed on _____, 19____, [on which the State had a reasonable opportunity to review and comment/on which the State has given its concurrence.] The ROD includes [EPA's explanation for any significant differences between the final plan and the proposed plan as well as] a responsiveness summary to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

L. Based on the information presently available to EPA [and the State], EPA [and the State] believe[s] that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

*Now, Therefore,* it is hereby Ordered, Adjudged, and Decreed:

**II. Jurisdiction**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345, and 42 U.S.C. 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint[s], Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

**III. Parties Bound**

2. This Consent Decree applies to and is binding upon the United States [and the State] and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. 9607(b)(3).

**IV. Definitions**

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

*CERCLA* shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

*Consent Decree* shall mean this Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix, this Decree shall control.

*Day* shall mean a calendar day unless expressly stated to be a working day. *Working day* shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

*EPA* shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"_____" shall mean the (State Pollution Control Agency or Environmental Protection Agency) and any successor departments or agencies of the State.

*Future Response Costs* shall mean all costs, including, but not limited to, direct and indirect costs, that the United States [and the State] incur[s] in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and paragraph 84 of section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States [and the State] in connection with the Site between [insert the date identified in the Past Response Costs definition] and the effective date of this Consent Decree and all interest on the Past Response Costs for [insert the date identified in the Past Response Costs definition] to [the date of payment of the Past Response Costs].

*National Contingency Plan* or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. 9605, codified at 40 CFR part 300, including, but not limited to, any amendments thereto.

*Operation and Maintenance* or *O & M* shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

*Owner Settling Defendants* shall mean the Settling Defendants listed in Appendix E.

*Paragraph* shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

*Parties* shall mean the United States [the State of _____,] and the Settling Defendants.

*Past Response Costs* shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States [and the State] incurred and paid with regard to the Site prior to [the date of the most recent cost update].

*Performance Standards* shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set

forth in the ROD of Section ____ of the SOW.

*Plaintiff[s]* shall mean the United States [and the State of _____].

*RCRA* shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

*Record of Decision* or *ROD* shall mean the EPA Record of Decision relating to the [Site or ____ Operable Unit at the Site] signed on _____, 19____, by the Regional Administrator, EPA Region ____, and all attachments thereto.

*Remedial Action* shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

*Remedial Action Work Plan* shall mean the document submitted by the Settling Defendants pursuant to paragraph 12.a of this Consent Decree and described more fully in paragraph 12.b.

*Remedial Design* shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

*Remedial Design Work Plan* shall mean the document submitted by the Settling Defendants pursuant to paragraph 11.a of this Consent Decree and described more fully in paragraph 11.b.

*Section* shall mean a portion of this Consent Decree identified by a roman numeral.

*Settling Defendants* shall mean those Parties identified in Appendices D (Non-Owner Settling Defendants) and E (Owner Settling Defendants).

[*Site* shall mean the _____ Superfund site, encompassing approximately ____ acres, located at [address or description of location] in [name of city], _____ County, [name of State] and depicted generally on the map attached as Appendix C.]

*State* [or *Commonwealth]* shall mean the State [Commonwealth] of _____.

*Statement of Work* or *"SOW"* shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

*Supervising Contractor* shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

*United States* shall mean the United States of America.

*Waste Material* shall mean (1) any "hazardous substance" under section 101(14) of CERCLA, 42 U.S.C. 9601(14); (2) any pollutant or contaminant under section 101(33), 42 U.S.C. 9601(33); [(3) any "solid waste" under section 1004(27) of RCRA, 42 U.S.C. 6903(27); and (4) any "hazardous material" under [State statutory citation]].

*Work* shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by section XXVI (Retention of Records).

**V. General Provisions**

*5. Objectives of the Parties*

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants and to reimburse response costs of the Plaintiffs.

*6. Commitments by Settling Defendants*

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States [and the State] for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States [and the State] under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

*7. Compliance With Applicable Law*

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

*8. Permits*

a. As provided in section 121(e) of CERCLA and § 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation.

*9. Notice of Obligations to Successors-in-Title*

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant(s) shall record a certified copy of this Consent Decree with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ Country, State of _____. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree [and any lien retained by the United States] and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of each Owner Settling Defendant with respect to the provision of access under section X (Access) [and the implementation of institutional controls under section ____] shall be binding upon any and all such Settling Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, each Owner Settling Defendant shall record at the Recorder's Office [or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property] a notice of obligation to provide access under section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Any Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA [and the State] of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to section X, shall continue to be met by the Settling Defendants. In addition, if the United States [and the State] approve[s], the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants to comply with the Consent Decree.]

**VI. Performance of the Work by Settling Defendants**

*10. Selection of Supervising Contractor*

a. All aspects of the Work to be performed by Settling Defendants pursuant to section VI (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA [after a reasonable opportunity for review and comment by the State. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA [and the State] in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA [and the State] and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State,] before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA [and the State] a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA [and the State] of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of section XIX (Force Majeure) hereof.]

*[11. Remedial Design*

a. Within ____ days after EPA's issuance of an authorization to proceed pursuant to paragraph 10, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within ____ days after EPA's issuance of an authorization to proceed, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 CFR 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: [List all items which should be included in the Remedial Design Work Plan. This list will be based on site specific factors and may include the following items: (1) Design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with section IX (Quality Assurance, Sampling and Data Analysis)); (2) a treatability study; (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) an intermediate design submittal; (6) a pre-final/final design submittal; and (7) a Construction Quality Assurance Plan.] In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) Design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) Final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.]

*[12. Remedial Action*

a. Within ____ days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for the construction of the remedy, in accordance with the SOW, as set forth in the design plans and

specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 CFR 1910.120.

b. The Remedial Action Work Plan shall include the following: [List all activities for which methodologies, plans and schedules should be included in the Remedial Action Work Plan. This list will be based on site specific factors and may include the following: (1) The schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials.] The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commerce physical on-site activities at the Site prior to approval of the Remedial Action Work Plan.]

13. The Work performed by the Settling Defendants pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

14. Settling Defendants acknowledge and agree that nothing in the Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind of Plaintiff[s] that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Settling Defendants' compliance with the work requirements shall not foreclose Plaintiff[s] from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

15. Settling Defendants shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (1) The name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

## VII. Additional Response Actions

16. In the event that EPA determines or the Settling Defendants propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party(ies).

17. Within 30 days of receipt of notice from EPA or Settling Defendants pursuant to paragraph 16 that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Defendants shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of paragraphs 11 and 12. Upon approval of the plan pursuant to section XII (Submissions Requiring Agency Approval), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Any additional response actions that Settling Defendants propose are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to section XII (Submissions Requiring Agency Approval).

19. Settling Defendants may invoke the procedures set forth in section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 62–65 of this Consent Decree.

## VIII. EPA Periodic Review

20. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by section 121(c) of CERCLA and any applicable regulations.

21. If required by sections 113(k)(2) or 117 of CERCLA, Settling Defendants and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region ____, or his/

her delegate will determine in writing whether further response actions are appropriate.

22. If the Regional Administrator, EPA Region ____, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the covenant not to sue set forth in section XXII. Settling Defendants shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA. The Settling Defendants may invoke the procedures set forth in section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved in paragraph 80, 81, or 83 or otherwise not barred by the covenant not to sue set forth in section XXII.

**IX. Quality Assurance, Sampling, and Data Analysis**

23. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all [treatability, design, compliance and monitoring] samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and [applicable guidance documents.] If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the ["Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988], and any amendment made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

24. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA [and the State] or their authorized representatives. Settling Defendants shall notify EPA [and the State] not less than [28] days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem necessary. Upon request, EPA [and the State] shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's['] oversight of the Settling Defendant's implementation of the Work.

25. Settling Defendants shall submit to EPA [and the State] ____ copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

26. Notwithstanding any provision of this Consent Decree, the United States [and the State] hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

**X. Access**

27. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States[, the State,] and their representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV; and

g. Assessing Settling Defendants' compliance with this Consent Decree.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States [or the State] may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States [or the State], in accordance with the procedures in Section XVII

(Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

29. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

**XI. Reporting Requirements**

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State ____ copies of written [monthly] progress reports that: (a) Describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous [month]; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous [month]; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous [month]; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next [six weeks] and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous [month] and those to be undertaken in the next [six weeks]. Settling Defendants shall submit these progress reports to EPA and the State by the [tenth day of every month] following the lodging of this Consent Decree until [EPA notifies the Settling Defendants pursuant to paragraph 48.b of section XV (Certification of Completion).] If requested by EPA [or the State], Settling Defendants shall also provide briefings for EPA [and the State] to discuss the progress of the Work.

31. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to section 103 of CERCLA or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region ____, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA section 103 or EPCRA Section 304.

33. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit ____ copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit ____ copies of all such plans, reports and data to the State.

35. All reports and other documents submitted by Settling Defendants to EPA (other than the [monthly] progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

**XII. Submissions Requiring Agency Approval**

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) Approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (b) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to paragraph 36 (a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in section XXI.

38. a. Upon receipt of a notice of disapproval pursuant to paragraph 36(d), Settling Defendants shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in section XXI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in paragraph 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any nondeficient portion of the submission. Implementation of any nondeficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under section XXI (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in section XX (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in

section XX (Dispute Resolution) and EPA's action is overturned pursuant to that section. The provisions of section XX (Dispute Resolution) and section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was orginally required, as provided in section XXI.

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

**XIII. Project Coordinators**

42. Within 20 days of lodging this Consent Decree, Settling Defendants[, the State] and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff[s] may designate other representatives, including, but not limited to, EPA [and State] employees, and federal [and State] contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 CFR part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

[44. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.]

**XIV. Assurance of Ability to Complete Work**

45. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of $_____ in one of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 CFR 264.143(f).

46. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to paragraph 45(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 CFR 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to paragraph 45 (d) or (e), they shall resubmit sworn statements conveying the information required by 40 CFR 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA [, after a reasonable opportunity for review and comment by the State,] determines at any time that the financial assurances provided pursuant to this section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

**XV. Certification of Completion**

*47. Completion of the Remedial Action*

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants[,] [and] EPA [and the State]. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writting of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in

the notice in accordance with the specifications and schedules established pursuant to this paragraph, subject to their right to invoke the dispute resolution procedures set forth in section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

*48. Completion of the Work*

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O&M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants[,] [and] EPA [and the State]. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by the registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

**XVI. Emergency Response**

49. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to paragraph 50, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA [Emergency Response Unit], Region _____. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this section, and EPA [or, as appropriate, the State] take[s] such action instead, Settling Defendants shall reimburse EPA [and the State] all costs of the response action not inconsistent with the NCP pursuant to section XVII (Reimbursement of Response Costs).

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States[, or the State,] to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

**XVII. Reimbursement of Response Costs**

51. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall:

a. Pay to the United States $_____, in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number [*Site/Spill ID Number*] and DOJ Case Number _____ in reimbursement of Past Response Costs. The Settling Defendants shall forward the certified check(s) to [Insert appropriate Regional Superfund Lockbox number and address] and shall send copies of the check to the United States as specified in Section XXVII (Notices and Submissions) and [names of any other receiving officials at EPA and their mailing addresses].

[b. Pay to the State $_____ in the form of a certified check or checks made payable to _____, in reimbursement of Past Response Costs incurred by the State. The Settling Defendants shall send the certified check(s) to _____.]

52. Settling Defendants shall reimburse the United States [and the State] for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States [and the State]. The United States [and the State] will [each] send Settling Defendants a bill requiring payment that includes a [name standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA, DOJ and the State and their contractors] on a [periodic] basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in paragraph 53. The Settling Defendants shall make all payments required by this paragraph in the manner described in paragraph 51.

53. Settling Defendants may contest payment of any Future Response Costs under paragraph 52 if they determine that the United States [or the State] has made an accounting error or if they allege that a cost item that is included respresents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the States' accounting is being disputed)] pursuant to section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of

an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States [or the State] in the manner described in paragraph 51. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of _____ and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in section XXVII (Notices and Submissions), [and the State] a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in section XX (Dispute Resolution). If the United States [or the State] prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States [or the State, if State costs are disputed,] in the manner described in paragraph 51. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States [or the State, if State costs are disputed] in the manner described in paragraph 51; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this paragraph in conjunction with the procedures set forth in section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States [and the State] for its [their] Future Response Costs.

54. In the event that the payments required by paragraph 51 are not made within 30 days of the effective date of this Consent Decree or the payments required by paragraph 52 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendents shall pay interest on the unpaid balance at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this section.

**XVIII. Indemnification and Insurance**

55. The United States [and the State] do[es] not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States [, the State,] and its [their] officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States [and the State] all costs it [they] incurs including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. [Neither] the United States [nor the State] shall [not] be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States [or the State].

56. Settling Defendants waive all claims against the United States [and the State] for damages or reimbursement or for set-off of any payments made or to be made to the United States [or the State], arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States [and the State] with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

57. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain [until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to paragraph 47.b. of section XV (Certification of Completion)] comprehensive general liability insurance and automobile insurance with limits of _____ million dollars, combined single limit naming as additional insured the United States [and the State]. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA [and the State] certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA [and the State] that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

**XIX. Force Majeure**

58. Force majeure, for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that

delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternative Project Coordinator or, in the event both of EPA's designated representatives are unavailable, [the Director of the Hazardous Waste Management Division, EPA Region _____], within [48] hours of when Settling Defendants first knew or should have known that the event might cause a delay. Within [5] days thereafter, Settling Defendants shall provide in writing to EPA [and the State] an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

60. If EPA [, after a reasonable opportunity for review and comment by the State,] agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA[, after a reasonable opportunity for review and comment by the State,] for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA[, after a reasonable opportunity for review and comment by the State,] does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA[, after a reasonable opportunity for review and comment by the State,] agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

61. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of paragraphs 58 and 59, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

**XX. Dispute Resolution**

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this section.

63. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

64. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States [and the State] a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under paragraph 65 or 66.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under paragraph 65 or 66.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under paragraph 65 or 66, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in paragraphs 65 and 66.

65. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this paragraph. For purposes of this paragraph, the adequacy of any response action includes, without limitation: (1) The adequacy or appropriateness of plans, procedures to implement plans, or any

other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region _____, will issue a final administrative decision resolving the dispute based on the administrative record described in paragraph 65.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to paragraph 65.c. and d.

c. Any administrative decision made by EPA pursuant to paragraph 65.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to paragraphs 65.a.

66. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to paragraph 64, the Director of the Waste Management Division, EPA Region _____, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding paragraph M of section I (Background) of this Consent Decree, judicial review of any dispute governed by this paragraph shall be governed by applicable provisions of law.

67. The invocation of formal dispute resolution procedures under this section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in section XXI (Stipulated Penalties).

**XXI. Stipulated Penalties**

68. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in paragraphs 69 and 70 to the United States [and the State] for failure to comply with the requirements of this Consent Decree specified below, unless excused under section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

[69. a. The following stipulated penalties shall be payable per violation per day to the United States [and the State] for any noncompliance identified in subparagraph b:

Penalty Per Violation Per Day:

Period of Noncompliance:

b. [List violations or compliance milestones].

70. The following stipulated penalties shall be payable per violation per day to the United States [and the State] for failure to submit timely or adequate reports [or other written documents] pursuant to paragarphs _____

Penalty Per Violation Per Day:

Period of Noncompliance:

71. In the event that EPA assumes performance of a portion or all of the work pursuant to paragraph 84 of section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of _____.]

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

73. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA [and the State] may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

74. All penalties owed to the United States [and the State] under this section shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under section XX (Dispute Resolution). All payments under this section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to [Regional Lockbox number and address], and shall reference CERCLA Number [Site/Spill ID Number] and DOJ Case Number _____. Copies of check(s) paid pursuant to this section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in section XXVII (Notices and Submissions).

75. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance

of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA [and the State] within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA [and the State] within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States [or the State] into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA [or the State] or to Settling Defendants to the extent that they prevail.

77. a. If Settling Defendants fail to pay stipulated penalties when due, the United States [or the State] may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to paragraph 74 at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States [or the State] to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to section 122(1) of CERCLA.

78. No payments made under this section shall be tax deductible for Federal [or State] tax purposes.

**XXII. Covenants Not To Sue by Plaintiffs**

[FOR OPERABLE UNIT CONSENT DECREES OR OTHER SITUATIONS IN WHICH THE UNITED STATES HAS DECIDED NOT TO GRANT A FULL COVENANT NOT TO SUE:]

79. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in paragraphs 80, 81, and 83 of this section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to sections 106 and 107(a) of CERCLA [and section 7003 of RCRA] for performance of the Work [and for recovery of Past Response Costs and Future Response Costs]. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by paragraph 51 of section XVII (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performances by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

[FOR CONSENT DECREES IN WHICH THE UNITED STATES HAS DECIDED TO GRANT A FULL COVENANT NOT TO SUE:]

79. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in paragraphs 80, 81, and 83 of this section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to sections 106 and 107(a) of CERCLA [and section 7003 of RCRA] relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by paragraph 51 of section XVII (Reimbursement of Response Costs). With respect to future liability, the covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to paragraph 47.b of section XV (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

80. *United States' Pre-certification Reservations.* Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the Remedial Action:

(i) Conditions at the Site, previously unknown to EPA, are discovered, or

(ii) Information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

81. *United States' Post-certification Reservations.* Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

(1) Conditions at the Site, previously unknown to EPA, are discovered, or

(ii) Information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

82. For purposes of paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

83. *General reservations of rights.* The covenants not to sue set forth above do not pertain to any matters other than

those expressly specified in paragraph 79. The United States [and the State] reserve[s], and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) Claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) Liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) Liability for damages for injury to, destruction of, or loss of natural resources;

(4) Liability for response costs that have been or may be incurred by [insert the name of all federal agencies which are trustees for natural resources and which have, or may in the future, spend funds relating to the Site];

(5) Criminal liability;

(6) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

[(7) Previously incurred costs of response above the amounts reimbursed pursuant to paragraph 51;]

[(8) Liability for additional operable units at the Site or the final response action;]

[(9) Liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.]

84. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to section XVII (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Consent Decree, the United States [and the State] retain[s] all authority and reserve[s] all rights to take any and all response actions authorized by law.

[If the State is a Co-plaintiff, insert the State's Covenant not to Sue the Settling Defendants and reservation rights.]

**XXIII. Covenants by Settling Defendants**

86. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States [or the State] with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through CERCLA sections 106(b)(2), 111, 112, 113 or any other provision of law, [any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

**XXIV. Effect of Settlement; Contribution Protection**

87. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

[88. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA section 113(f)(2), 42 U.S.C. 9613(f)(2).]

89. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States [and the State] in writing no later than 60 days prior to the initiation of such suit or claim.

90. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States [and the State] within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States [and the State] within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

91. In any subsequent administrative judicial proceeding initiated by the United States [or the State] for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant[s] shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States [or the State] in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in section XXII (Covenants Not to Sue by Plaintiffs).

**XXV. Access to Information**

92. Settling Defendants shall provide to EPA [and the State], upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the work. Settling Defendants shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

93. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with

section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7), and 40 CFR 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 CFR part 2, subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA [and the State], or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) The title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

94. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

**XXVI. Retention of Records**

95. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to paragraph 48.b of section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted by the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to paragraph 48.b of section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

96. At the conclusion of this document retention period, Settling Defendants shall notify the United States [and the State] at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States [and the State], Settling Defendants shall deliver any such records or documents to EPA [or the State]. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following:

(1) The title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privilege.

97. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to section 104(e) and 122(e) of CERCLA and section 3007 of RCRA.

**XXVII. Notices and Submissions**

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one part to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, [the State,] and the Settling Defendants, respectively.

*As to the United States:*

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044.
Re: DJ # _____ and
Director, Waste Management Division, United States Environmental Protection Agency.
Region _____

*As to EPA:*

[Name], EPA Project Coordinator. United States Environmental Protection Agency.
Region _____

*As to the State:*

[Name] State Project Coordinator.
[Address]

*As to the Settling Defendants:*

[Name], Settling Defendants' Project Coordinator.
[Address]

**XXVIII. Effective Date**

99. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

**XXIX. Retention of Jurisdiction**

100. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with section XX (Dispute Resolution) hereof.

**XXX. Appendices**

101. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the ROD; "Appendix B" is the SOW; "Appendix C" is the description and/or map of the Site; "Appendix D" is the complete list of the Settling Defendants; ["Appendix E" is the complete list of the Owner Settling Defendants.]

**XXXI. Community Relations**

102. Settling Defendants shall propose to EPA [and the State] their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan.

Settling Defendants shall also cooperate with EPA [and the State] in providing information regarding of the Work to the public. As requested by EPA [or the State], Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA [or the State] to explain activities at or relating to the Site.

**XXXII. Modification**

103. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

104. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

105. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

**XXXIII. Lodging and Opportunity for Public Comment**

106. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or consideration which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

107. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XXXIV. Signatories/Service**

108. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

109. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

110. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

So ordered this _____ day of _____, 19____.

_____

United States District Judge

The Undersigned Parties enter into this Consent Decree in the matter of United States v. _____, relating to the _____ Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

_____

[Name], Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530

_____

[Name], Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530

_____

[Name], Assistant United States Attorney, _____ District of _____, U.S. Department of Justice
[Address]

_____

[Name], Assistant Administrator for Enforcement, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460

_____

[Name], Office of Enforcement, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460

_____

[Name], Regional Administrator, Region _____, U.S. Environmental Protection Agency
[Address]

_____

[Name], Assistant Regional Counsel, U.S. Environmental Protection Agency, Region _____
[Address]

United States v. _____
Consent Decree Signature Page
For the State of _____
Date: _____

_____

[Name]
[Title]
[Address]

The Undersigned Party enters into this Consent Decree in the matter of United States v. _____, relating to the _____ Superfund Site.

FOR _____ COMPANY, INC.*
Date: _____

_____

[Name—Please Type]
[Title—Please Type]
[Address—Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] _____
Title: _____
Address: _____
Tel. Number: _____

[FR Doc. 91-15833 Filed 7-5-91; 8:45 am]
BILLING CODE 6560-50-M

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

federal register

Monday
July 8, 1991

Part IV

# Department of Education

## Educational Research and Development Centers Program; Notice Inviting Applications for a New Award

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.117A]

### Educational Research and Development Centers Program; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1992

*Purpose of Program:* To support a national research and development center to conduct research and related activities in the area of reading.

*Eligible Applicants:* The following parties are eligible to apply for an award for a Research and Development Center: institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

*Deadline for Transmittal of Applications:* October 18, 1991.

*Applications Available:* July 17, 1991.

*Available Funds:* This Center will be awarded as a cooperative agreement. Funding for the first year of the National Reading Research Center will be up to $1.2 million. The following table indicates the estimated funding levels over the five-year project period. The funding levels for years 2 through 5 are estimates depending upon the availability of funds and needs as reflected in the approved application.

| | *Million* |
|---|---|
| First year funding | [1] $1.2 |
| Second year funding | 1.5 |
| Third year funding | 1.6 |
| Fourth year funding | 1.7 |
| Fifth year funding | 1.8 |
| Five year total | 7.8 |

[1] Up to.

*Estimated Number of Awards:* 1.

*Project Period:* Up to 60 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b). The regulations for this program in 34 CFR parts 706 and 708.

**SUPPLEMENTARY INFORMATION:** On April 30, 1991, the Secretary published a notice in the Federal Register soliciting written comments on a research agenda for reading, content, and related areas. The Secretary has decided to fund a National Reading Research Center to address many of the issues raised by commenters in response to the notice.

The mission statement describing the areas of research the Secretary is particularly interested in supporting under the National Reading Research Center will be found in the application package. These areas of research include: Instructional strategies for at-risk students; evaluation of instructional approaches; alternative assessments of student learning; teacher education and instructional interventions; reading and learning from school textbooks and other content materials; reading acquisition and cognition; and the sociocultural contexts within which reading takes place.

*Priority:* Under 34 CFR 75.105(c)(3) and 34 CFR 706.3(b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only an application that meets this absolute priority.

*Research on Reading and Literacy:* (English Literacy, including reading, writing, and language skills (34 CFR 706.3(b)(19)).

*Selection Criteria:* In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 708.11.

The program regulations in 34 CFR 706.20(b) and (d) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition, the 10 points are added to plan of operation (34 CFR 708.11(c)), for a possible total of 25 points.

**FOR APPLICATIONS OR ADDITIONAL INFORMATION CONTACT:** Dr. Anne P. Sweet, U.S. Department of Education, OERI, Office of Research, room 606D, 555 New Jersey Avenue, NW., Washington, DC 20208–5648. Telephone: (202) 219–2021. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

**Program Authority:** 20 U.S.C. 1221e.

Dated: July 1, 1991.

**Bruno V. Manno,**

*Acting Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 91–16089 Filed 7–5–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
July 8, 1991

# Part V

# Department of the Interior

## Mineral Management Service

## Outer Continental Shelf, Western Gulf of Mexico; Oil and Gas Lease Sale 135 and Notice of Leasing Systems, Sale 135; Notices

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 135

1. **Authority**. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356 (1988)), and the regulations issued thereunder (30 CFR Part 256).

2. **Filing of Bids**. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., Tuesday, August 20, 1991. All times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, August 21, 1991. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m., Tuesday, August 20, 1991. Bid Opening Time will be 9 a.m., Wednesday, August 21, 1991, at the Clarion Hotel, 1500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register on April 4, 1991, at 56 FR 13842.

3. **Method of Bidding**. A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 135 (map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., August 21, 1991," must be submitted for each block or prescribed bidding unit bid upon. The company qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 135, NG 14-3, Corpus Christi, Block 455, not to be opened until 9 a.m., Wednesday, August 21, 1991, Overthrust Inc. No. 1093." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. For identification purposes, the company name (abbreviations acceptable) and company qualification number should also appear on the check or draft together with bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block or bidding unit, as referenced in paragraph 12, will be considered.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. **Bidding, Yearly Rental, and Royalty Systems**. The following bidding, yearly rental, and royalty systems apply to this sale:

(a) **Bidding Systems**. All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof.

(b) **Yearly Rental**. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof.

(c) **Royalty Systems**. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The following royalty systems will be used:

(1) **Leases with a 12 1/2-Percent Royalty**. This royalty rate applies to blocks in water depths of 400 meters or greater as shown on map 2 (see paragraph 12). Leases issued on the blocks and bidding units offered in this area will have a fixed royalty rate of 12 1/2 percent.

(2) **Leases with a 16 2/3-Percent Royalty**. This royalty rate applies to blocks in water depths of less than 400 meters (see map 2). Leases issued on the blocks and bidding units offered in this area will have a fixed royalty rate of 16 2/3 percent.

5. **Equal Opportunity**. Each bidder must qualify for the sale by submitting prior to the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(e).

6. **Bid Opening**. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. **Deposit of Payment**. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. **Withdrawal of Blocks**. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. **Acceptance, Rejection, or Return of Bids**. The United States reserves the right to reject any and all bids. In any case, no bid may be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. **Successful Bidders**. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease



issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

11. **Leasing Maps and Official Protraction Diagrams**. Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps--Texas Set. This set of 16 maps sells for $18.00.

| | |
|---|---|
| Map 1 | South Padre Island Area |
| Map 1A | South Padre Island Area, East Addition (revised 12/16/85) |
| Map 2 | North Padre Island Area |
| Map 2A | North Padre Island Area, East Addition |
| Map 3 | Mustang Island Area |
| Map 3A | Mustang Island Area, East Addition |
| Map 4 | Matagorda Island Area |
| Map 5 | Brazos Area |
| Map 5B | Brazos Area, South Addition |
| Map 6 | Galveston Area |
| Map 6A | Galveston Area, South Addition |
| Map 7 | High Island Area |
| Map 7A | High Island Area, East Addition |
| Map 7B | High Island Area, South Addition |
| Map 7C | High Island Area, East Addition, South Extension |
| Map 8 | Sabine Pass Area |

(b) OCS Protraction Diagrams. These diagrams sell for $2.00 each.

| | |
|---|---|
| NG 14-3 | Corpus Christi (revised 01/27/76) |
| NG 14-6 | Port Isabel (revised 04/27/89) |
| NG 15-1 | East Breaks (revised 01/27/76) |
| NG 15-2 | Garden Banks (revised 10/19/81) |
| NG 15-4 | Alaminos Canyon (revised 04/27/89) |
| NG 15-5 | Keathley Canyon (revised 04/27/89) |
| NG 15-8 | (No Name) (revised 04/27/89) |

(c) A complete set of all the above OCS Leasing Maps and OCS Protraction Diagrams is available on microfiche for $5.00 per set.

12. **Description of the Areas Offered for Bids**.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines

such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)):

(1) Western Gulf of Mexico Lease Sale 135-Final. Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 135-Final. Unleased Acreage of Blocks with Aliquots Under Lease.

(b) Maps 1, 2, and 3 referred to in this Notice are available on request from the Gulf of Mexico regional office:

**Map 1** entitled "Western Gulf of Mexico Lease Sale 135 - Final. Stipulations, Lease Terms, and Warning Areas."

**Map 2** entitled "Western Gulf of Mexico Lease Sale 135 - Final. Bidding Systems and Bidding Units." Refers largely to Royalty Rates and Bidding Units.

**Map 3** entitled "Western Gulf Mexico Lease Sale 135 - Final. Detailed Maps of Biologically Sensitive Areas." Pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those blocks or partial blocks described in pages 7 through 14 of this Notice and the deferrals referenced on page 15.

(e) The proposed Notice for this sale, which was approved in March 1991, listed all Federal acreage under lease at that time. Subsequent lease expirations and relinquishments by lessees, however, have resulted in the availability of a number of previously leased blocks for bidding in this sale. For the convenience of potential bidders, these newly available blocks are listed on page 6 of this Notice.



Western Gulf of Mexico
Update List

The following blocks have become available for leasing since publication of the Proposed Notice of Sale 135. This list is being furnished for your convenience.

**Mustang Island**

A-11
A-12
A-13
A-14

**High Island**

261

**High Island, South Addition**

A-437

**High Island, East Addition, South Extension**

A-290
A-342
A-357

**Garden Banks**

153
382
469

Sale 135

WESTERN GULF OF MEXICO LEASED LANDS

(1) Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

**S. Padre Island**

1030
1031
1032
1039
1040
1043
1044
1050
1133
1143
1144
1153
1154

**S. Padre Island, East Addition**

1100
1115
1116
1117
1120
1136
1155
A-62

**N. Padre Island**

886
887
905

**N. Padre Island (continued)**

909
914
927
929
934
935
947
948
949
954
955
956
957
967
968
969
976
977
978
987
988
989
1010

**N. Padre Island, East Addition**

889
890
891
892
893
910
911

**N. Padre Island, East Addition (continued)**

912
913
930
931
932
951
952
970
972
974
975
990
991
993
995
996
1011
1016
1018
A-5
A-6
A-7
A-8
A-9
A-10
A-11
A-12
A-13
A-14
A-16
A-22
A-23
A-26
A-27
A-30
A-31
A-32
A-33
A-38
A-40
A-41
A-42

**N. Padre Island, East Addition (continued)**

A-43
A-44
A-45
A-47
A-56
A-57
A-58
A-59
A-62
A-63
A-64
A-65
A-69
A-70
A-72
A-75
A-76
A-83
A-84
A-86
A-87

**Mustang Island**

725
726
728
729
730
731
737
738
739
740
742
743
744

**Mustang Island (continued)**

745
750
751
752
754
755
756
757
758
759
761
762
763
764
765
767
768
769
775
776
777
778
779
781
782
783
784
785
786
787
789
790
791
792
793
800
802
803
805
806
807
808

**Mustang Island (continued)**

809
811
815
821
822
823
825
826
827
828
830
831
832
833
834
835
837
838
842
843
844
846
847
848
849
850
851
852
853
854
855
856
858
859
867
868
869
870
871
872
873
874



**Mustang Island, East Addition**

A-91
A-92
A-95
A-96
A-97
A-98
A-107
A-111
A-112
A-113
A-114
A-116
A-117
A-118
A-121
A-122
A-124
A-133
A-134
A-135
A-136
A-137
A-138
A-139
A-140
A-149
A-150
A-151
A-153
A-162
A-174

**Matagorda Island**

487
518
519
520
526

**Mustang Island, East Addition (continued)**

A-85
A-86
A-91
A-92
A-95
A-96
A-97
A-98
A-107
A-111
A-112
A-113
A-114
A-116
A-117
A-118
A-121
A-122
A-124
A-133
A-134
A-135
A-136
A-137
A-138
A-139
A-140
A-149
A-150
A-151
A-153
A-162
A-174

**Matagorda Island (continued)**

527
529
555
556
557
564
565
566
567
568
569
586
587
588
589
591
592
599
600
601
602
603
604
605
606
607
616
617
618
619
620
621
622
623
624
632
633
634
635
636
637
638
639
640
641
646
649
650

**Matagorda Island (continued)**

651
652
653
654
656
657
658
663
664
665
666
667
668
669
670
671
672
674
677
678
681
682
685
686
687
688 - (Portion Seaward of 8(g) Line)
696
700
701
703
704
705
706
708
710
711
712
713
714
715
716
717
718
A-1
A-2

**Matagorda Island (continued)**

A-3
A-4
A-5
A-7
A-8

**Brazos**

342
364
365
366
367
375
376
377
378
396
397
398
399
400
411
412
413
414
415
416
430
431
432
433
434
435- (Portion Seaward of 8(g) Line)
436
437
438
439
449

**Brazos (continued)**

450
451
452 (E½)
453
454
455
456
457
458
466
467
469
470
474
475
476
477
488
490
491
492
494
496
498
500
501
504
506
509
510
513
514
515
516
517
530
531
532
533
534
535
538
539
541
542
544
548
549

**Brazos (continued)**

550
552
553
570
571
572
573
576
577
578
579
583
584
608
614
615
A-1
A-2
A-3
A-6
A-7
A-10
A-14
A-16
A-17
A-18
A-19
A-20
A-21
A-22
A-23
A-27
A-29
A-35
A-36
A-37
A-39
A-40
A-41

**Brazos, South Addition**

A-47
A-51

**Brazos, South Addition (continued)**

A-52
A-53
A-61
A-62
A-63
A-64
A-65
A-66
A-69
A-70
A-73
A-78
A-84
A-85
A-93
A-99
A-100
A-102
A-104
A-105
A-107
A-110
A-111
A-113
A-124
A-127
A-128
A-129
A-131
A-132
A-133

**Galveston**

144
151
180
181
182
188
189
190
191

**Galveston (continued)**

192
209
210
211
212
213
222
223
224
225
226
227
237
238
239
240
241
242
243
252
253
254
255
258
265
266
267
268
269
270
271
272
273
274
275
281
282
283
284
286
287
288
289
290
291

**Galveston (continued)**

295-
(S½NE¼NE¼;
NW¼NE¼;
W½SW¼NE¼;
NE¼SW¼NE¼;
N½SE¼NE¼;
W½;W½NW¼SE¼;
S½SE¼)
296-
(NE¼;
NE¼NE¼NW¼;
S½NE¼NW¼;
SE¼NW¼;
S½SW¼NW¼;
N½SW¼;
NE¼SW¼SW¼;
N½SE¼SW¼;
N½SE¼;
N½SW¼SE¼
SE¼SE¼)
297
298
300
301
302
303
304
305
313
314 -
(Portion
Seaward of
8(g) Line)
315
316
317
318
319
320
321
322
323
326
327
328
331
332
333

**Galveston (continued)**

334
343
345
346
347
349
350
351
352
353
354
356
357
358
359
360
361
362
363
379
380
382
383
384
388
389
390
391
392
393
395
418
419
420
421
423
424
427
428
429
460
461
462
464
465
503
A-9
A-14

**Galveston (continued)**

A-15
A-16
A-20
A-21
A-34
A-35
A-36
A-37
A-38
A-41
A-42
A-49
A-50
A-54
A-55
A-57
A-58
A-60
A-62
A-77
A-78
A-79
A-80
A-81
A-84
A-85
A-86
A-87
A-88
A-93
A-94
A-96
A-100
A-101
A-105
A-106
A-108
A-109
A-110
A-111

**Galveston, South Addition**

A-115
A-120
A-122
A-125
A-126
A-127
A-129
A-130
A-131
A-139
A-141
A-142
A-157
A-158
A-172
A-176
A-177
A-189
A-193
A-200
A-201
A-205
A-206
A-207
A-212
A-214
A-218
A-219
A-230
A-231
A-236
A-237
A-245
A-248
A-249
A-250

**High Island**

19
20
21

**High Island (continued)**

22
34
35
36
37
47
48
49
50
51
52
53 (NE¼;
E½NE¼SE¼)
54
55
63
64
65
66
67
68
69
70
71
72
73
86
87
88
89
91
92
93
94
95
97
98
105
106
108
109
110
111
113
115
116
117
131

**High Island (continued)**

134
135-
(N½; N½S½;
SW¼SW¼;
W½SE¼SW¼;
NE¼SE¼SW¼;
N½S½SE¼)
136-
(E½;
E½NE¼SW¼;
S½SE¼SW¼)
137
138
139
140
141
142
143
153
154
155 (W½)
160-
(NE¼; NE¼NW¼;
E½SE¼NW¼;
N½SE¼;
N½SE¼SE¼)
161-
(NW¼NE¼NW¼;
S½NE¼NW¼;
W½NW¼;
SE¼NW¼;
NE¼NE¼SW¼;
W½NE¼SW¼;
NW¼SW¼;
NW¼SW¼SW¼)
162
163
164
169
170
171
172
173
174
175
176
177
178

**High Island (continued)**

179
193
194
195
196
197
198
199
200
201
202
204
205
206
207
208
228
229
230
231
233
234
235
236
260
262
263
264
292
A-1
A-2
A-3
A-4
A-5
A-6
A-7
A-8
A-9
A-10
A-11
A-12
A-14
A-17
A-18
A-19
A-20
A-21
A-22

**High Island (continued)**

A-24
A-38
A-39
A-41
A-44
A-45
A-61
A-62
A-63
A-64
A-66
A-67
A-68
A-69
A-71
A-72
A-74
A-83
A-87
A-92
A-93
A-94
A-95
A-96
A-98
A-99
A-107
A-108
A-122
A-126
A-127
A-128
A-129
A-132
A-137
A-139
A-141
A-142
A-143
A-154
A-155
A-165

**High Island, South Addition**

A-411
A-412
A-414
A-417
A-418
A-419
A-421
A-422
A-423
A-424
A-426
A-434
A-435
A-438
A-439
A-440
A-441
A-442
A-443
A-444
A-445
A-446
A-447
A-448
A-451
A-461
A-462
A-465
A-466
A-467
A-469
A-470
A-471
A-472
A-474
A-475
A-476
A-477
A-479
A-480
A-481
A-482
A-483
A-484
A-486
A-489
A-490
A-494

**High Island, South Addition (continued)**

A-496
A-497
A-499
A-501
A-502
A-503
A-505
A-506
A-510
A-511
A-515
A-517
A-518
A-519
A-520
A-521
A-522
A-523
A-524
A-525
A-527
A-528
A-529
A-531
A-532
A-533
A-536
A-537
A-539
A-540
A-542
A-544
A-545
A-546
A-547
A-548
A-549
A-550
A-551
A-552
A-553
A-554
A-555
A-556
A-557
A-558
A-560
A-561

**High Island, South Addition (continued)**

A-562
A-563
A-564
A-567
A-568
A-570
A-571
A-572
A-573
A-574
A-576
A-582
A-584
A-585
A-586
A-587
A-588
A-589
A-590
A-591
A-593
A-595
A-596

**High Island, East Addition**

38
39
45
46
74
75
76
83
84
85
118
119
120
128

**High Island, East Addition (continued)**

129
130
166
167
A-170
A-171
A-172
A-173
A-174
A-175
A-176
A-177
A-178
A-183
A-185
A-187
A-192
A-193
A-194
A-195
A-200
A-201
A-205
A-206
A-207
A-217
A-218
A-224
A-228
A-230
A-231
A-233
A-237
A-239
A-240
A-244
A-246
A-250
A-253
A-254
A-255
A-259

**High Island, East Addition, S. Extension**

A-260
A-261
A-264
A-269
A-270
A-271
A-272
A-274
A-280
A-281
A-282
A-283
A-285
A-286
A-288
A-293
A-294
A-295
A-296
A-297
A-299
A-300
A-301
A-302
A-303
A-305
A-306
A-307
A-308
A-309
A-310
A-312
A-313
A-314
A-317
A-318
A-321
A-322
A-323
A-325
A-326
A-327
A-329
A-330
A-332
A-333
A-334
A-335

**High Island, East Addition, S. Extension (continued)**

A-336
A-338
A-339
A-340
A-341
A-343
A-344
A-345
A-347
A-348
A-349
A-350
A-351
A-352
A-353
A-354
A-355
A-356
A-360
A-361
A-362
A-363
A-365
A-366
A-367
A-368
A-369
A-370
A-371
A-372
A-373
A-374
A-376
A-377
A-378
A-379
A-381
A-382
A-383
A-384
A-385
A-386
A-387
A-388
A-389
A-390
A-391
A-392

**High Island, East Addition, S. Extension (continued)**

A-393
A-396
A-397
A-402

**Sabine Pass**

17
18
40

**Corpus Christi**

521
565
566
609
610

**East Breaks**

73
109
110
111
112
114
118
120



**East Breaks (continued)**

122
125
154
156
157
158
159
160
161
162
164
165
166
168
169
171
172
173
207
208
209
211
213
214
215
216
217
235
236
237
238
246
250
251
252
254
255
256
257
258
260
279
280
290
296
300
302
304

**East Breaks (continued)**

329
330
343
344
345
384
385
388
389
392
393
402
403
428
429
437
462
473
474
475
476
477
506
507
512
514
519
520
523
524
555
556
557
558
562
563
564
565
566
567
568
579
580
593
598
599
600
601

**East Breaks (continued)**

602
604
605
607
623
624
625
626
637
638
639
640
641
642
643
644
645
646
647
648
649
684
685
686
688
689
690
691
692
728
729
732
739
740
741
783
784
785
901
902
904
943
944
945
946
947
948
949

**East Breaks (continued)**

988
989
990
991
992
994

**Garden Banks**

21
22
23
26
27
28
29
35
65
68
69
70
71
80
81
83
84
85
97
98
102
103
105
106
112
115
117
120
121
122
123
124
125

**Garden Banks (continued)**

126
127
128
129
141
142
143
144
145
147
151
152
154
156
157
158
163
164
165
166
167
168
170
173
179
181
183
184
185
186
187
188
189
190
191
192
193
195
196
197
198
199
200
201
202
203
204
205

**Garden Banks (continued)**

206
207
208
210
211
212
213
215
216
217
222
224
225
226
228
229
230
232
233
234
235
236
237
239
240
241
242
244
245
248
250
251
252
253
257
258
259
260
269
272
273
274
275
276
277
278
279
280

| Garden Banks (continued) | Garden Banks (continued) | Garden Banks (continued) | Garden Banks (continued) | Garden Banks (continued) | Port Isabel |
|---|---|---|---|---|---|
| 281 | 380 | 471 | 607 | 814 | 39 |
| 282 | 381 | 472 | 610 | 815 | 40 |
| 283 | 386 | 473 | 611 | 816 | 81 |
| 284 | 387 | 474 | 622 | 817 | 82 |
| 285 | 388 | 475 | 623 | 826 | 125 |
| 289 | 389 | 476 | 625 | 831 | 130 |
| 290 | 390 | 477 | 629 | 832 | 131 |
| 291 | 397 | 485 | 630 | 833 | 166 |
| 295 | 398 | 494 | 638 | 848 | 167 |
| 298 | 399 | 498 | 639 | 849 | 174 |
| 299 | 405 | 506 | 644 | 850 | 175 |
| 302 | 407 | 507 | 645 | 855 | 214 |
| 303 | 409 | 508 | 646 | 856 | 216 |
| 305 | 410 | 512 | 650 | 860 | 217 |
| 314 | 411 | 513 | 651 | 861 | 218 |
| 315 | 412 | 514 | 653 | 862 | 481 |
| 322 | 413 | 515 | 674 | 875 | 482 |
| 324 | 414 | 516 | 682 | 876 | 525 |
| 326 | 415 | 517 | 683 | 877 | 526 |
| 327 | 416 | 523 | 694 | 885 | 568 |
| 329 | 418 | 524 | 695 | 892 | 570 |
| 330 | 419 | 525 | 697 | 893 | 876 |
| 331 | 420 | 529 | 726 | 894 | |
| 333 | 421 | 536 | 727 | 895 | |
| 334 | 422 | 549 | 736 | 905 | |
| 335 | 423 | 550 | 738 | 906 | |
| 341 | 424 | 554 | 739 | 919 | |
| 342 | 425 | 555 | 740 | 920 | |
| 344 | 426 | 556 | 741 | 921 | **Alaminos Canyon** |
| 345 | 427 | 557 | 754 | 929 | |
| 346 | 428 | 558 | 767 | 930 | |
| 348 | 429 | 559 | 771 | 936 | |
| 349 | 430 | 562 | 772 | 938 | 20 |
| 361 | 443 | 563 | 775 | 939 | 21 |
| 362 | 444 | 568 | 782 | 940 | 24 |
| 363 | 447 | 569 | 783 | 946 | 25 |
| 365 | 448 | 579 | 784 | 950 | 26 |
| 366 | 455 | 580 | 785 | 963 | 65 |
| 367 | 456 | 588 | 786 | 964 | 133 |
| 368 | 457 | 593 | 787 | 974 | 192 |
| 371 | 462 | 594 | 788 | 975 | 236 |
| 372 | 463 | 598 | 798 | 990 | 237 |
| 374 | 464 | 599 | 803 | 991 | 261 |
| 375 | 465 | 600 | 804 | 996 | 280 |
| 376 | 466 | 601 | 806 | | 305 |
| 377 | 467 | 602 | 811 | | 336 |
| 378 | 468 | 603 | 812 | | 337 |
| 379 | 470 | 606 | 813 | | 380 |



| Alaminos Canyon (continued) | Alaminos Canyon (continued) | Keathley Canyon (continued) | Keathley Canyon (continued) |
|---|---|---|---|
| 390 | 783 | 167 | 583 |
| 398 | 810 | 168 | 584 |
| 441 | 811 | 177 | 594 |
| 442 | 813 | 178 | 595 |
| 475 | 814 | 179 | 596 |
| 489 | 818 | 191 | 600 |
| 490 | 822 | 192 | 601 |
| 491 | 826 | 199 | 603 |
| 518 | 827 | 200 | 604 |
| 533 | 854 | 201 | 638 |
| 534 | 856 | 202 | 639 |
| 556 | 857 | 203 | 647 |
| 557 | 865 | 211 | 648 |
| 558 | 900 | 212 | 649 |
| 595 | 901 | 221 | 650 |
| 599 | 903 | 236 | 693 |
| 600 | 904 | 241 | 694 |
| 601 | 908 | 242 | 695 |
| 602 | 947 | 243 | |
| 644 | 951 | 245 | |
| 645 | 954 | 246 | |
| 646 | 955 | 247 | |
| 647 | 998 | 255 | |
| 648 | 999 | 256 | |
| 687 | | 286 | |
| 691 | | 300 | |
| 719 | | 301 | |
| 720 | | 302 | |
| 726 | | 324 | |
| 728 | | 346 | |
| 730 | **Keathley Canyon** | 377 | |
| 731 | | 388 | |
| 734 | | 420 | |
| 735 | | 421 | |
| 736 | 6 | 422 | |
| 763 | 7 | 431 | |
| 764 | 114 | 432 | |
| 766 | 122 | 465 | |
| 767 | 123 | 466 | |
| 770 | 133 | 476 | |
| 774 | 134 | 509 | |
| 775 | 155 | 512 | |
| 776 | 156 | 522 | |
| 778 | 157 | 523 | |
| 779 | 158 | 556 | |
| 780 | 159 | 557 | |
| 781 | 165 | 567 | |
| 782 | 166 | 568 | |

(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks: A-375 and A-398.

(3) No bids will be accepted in the Corpus Christi Naval Operations Deferral Area containing 340 blocks as shown on Map 1.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.



(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

**Stipulation No. 2--Protection of Topographic Features.**

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)
The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

| Bank Name | No Activity Zone Defined by Isobath (meters) |
|---|---|
| **Shelf Edge Banks** | |
| West Flower Garden Bank* (defined by 1/4 1/4 1/4 system) | 100 |
| East Flower Garden Bank* (defined by 1/4 1/4 1/4 system) | 100 |
| MacNeil Bank | 82 |
| 29 Fathom Bank | 64 |
| Rankin Bank | 85 |
| Geyer Bank | 85 |
| Elvers Bank | 85 |
| Bright Bank***** | 85 |
| McGrail Bank***** | 85 |
| Rezak Bank***** | 85 |
| Sidner Bank | 85 |
| Parker Bank | 85 |
| Stetson Bank | 62 |
| Applebaum Bank | 85 |

| Bank Name | No Activity Zone Defined by Isobath (meters) |
|---|---|
| **Low Relief Banks**** | |
| Mysterious Bank | 74,76,78,80,84 (see leasing map) |
| Coffee Lump | Various (see leasing map) |
| Blackfish Ridge | 70 |
| Big Dunn Bar | 65 |
| Small Dunn Bar | 65 |
| 32 Fathom Bank | 52 |
| Claypile Bank*** | 50 |
| **South Texas Banks****** | |
| Dream Bank | 78,82 |
| Southern Bank | 80 |
| Hospital Bank | 70 |
| North Hospital Bank | 68 |
| Aransas Bank | 70 |
| South Baker Bank | 70 |
| Baker Bank | 70 |

* Flower Garden Banks--In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.
** Low Relief Banks--Only paragraph (a) applies.
*** Claypile Bank--Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.
**** South Texas Banks--Only paragraphs (a) and (b) apply.
***** Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.



(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

**Stipulation No. 3--Military Warning Areas.**

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) **Hold and Save Harmless**

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) **Electromagnetic Emissions**

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) **Operational**

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

Warning Areas' Command Headquarters
Western Planning Area

| Warning Areas | Command Headquarters |
|---|---|
| W-228 | Chief, Naval Air Training<br>Naval Air Station<br>ATTN: Lt. Commander Williams<br>or Lt. Jex<br>Corpus Christi, Texas 78419-5100<br>Telephone: (512) 939-3927/3902 |
| W-602 | Headquarters SAC/DONO<br>Deputy Chief of Staff<br>Operations Headquarters<br>Strategic Air Command<br>Attn: Lt. Col. Forstie<br>or Mr. Berube<br>Offutt AFB, Nebraska 68113-5001<br>Telephone: (402) 294-3103/3450 or<br>Scheduling: (402) 294-2334 |



14. **Information to Lessees.**

(a) **Supplemental Documents.** For copies of the various documents identified as available from the Gulf of Mexico regional office, bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment, same address, or phone (504) 736-2759.

(b) **Navigation Safety.** Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander William P. Prosser, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone (504) 589-6901.

(c) **Offshore Pipelines.** Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) **8-Year Leases.** Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

(e) **Affirmative Action.** Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) Archaeological Resources. Bidders are advised of proposed changes in the historic shipwreck requirements and the areas on the OCS where such surveys will be required (see Stipulation No. 1). The proposed requirements would significantly reduce the area where historic shipwreck surveys will be required but call for a more concentrated survey interval (i.e., from 150 meters to 50 meters) in high probability areas of historic shipwrecks, to better locate, evaluate, and protect historic period wrecks. These proposed changes are specifically described at 56 FR 20234-20238 in the Federal Register of May 2, 1991, and, if adopted, would supersede all previously adopted Notices to Lessees and Letters to Lessees.

Barry Williamson

Director, Minerals Management Service

Barry Williamson

Approved:

Assistant Secretary, Land and Mineral Management

David O'Neal

7-2-91

Date

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Western Gulf of Mexico

Notice of Leasing Systems, Sale 135

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 135, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 135) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system.

[FR Doc. 91-16170 Filed 7-5-91; 8:45 am]
BILLING CODE 4310-MR-C



As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 135 - Final. Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Director, Minerals Management Service

Barry Williamson

Approved:

Assistant Secretary - Land and Minerals Management

David O'Neal

July 2, 1991

federal register

Monday
July 8, 1991

# Part VI

# Department of Transportation

## Coast Guard

46 CFR Part 16

**Chemical Drug Testing Programs for Commercial Vessel Personnel; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Part 16**

**[CGD 90-014]**

**RIN 2115-AC45**

## Chemical Drug Testing Programs for Commercial Vessel Personnel

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes random chemical drug testing requirements for all crewmembers who serve in positions which affect the safe operation of a commercial vessel. The Coast Guard believes that random chemical testing for dangerous drugs is necessary for the overall effectiveness of any program to discourage drug use by commercial vessel personnel and thereby enhance the safety of the marine transportation industry.

These regulations reduce the number of crewmembers subject to random testing under the maritime transportation drug testing program and remove industrial personnel on industrial vessels from the requirements for drug testing.

**EFFECTIVE DATE:** This rule is effective on October 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** LCDR Thomas Murphy, U.S. Coast Guard Headquarters, Office of Marine Safety, Security and Environmental Protection (G-MMI-2), telephone (202) 267-1421.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal document drafters are Mr. Walter D. Rabe, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Christena Green, Project Counsel, Office of Chief Counsel.

### Background

On November 21, 1988, the Coast Guard issued a Final Rule requiring pre-employment, periodic, random, post-accident and reasonable cause testing for commercial vessel personnel. (53 FR 47064) On November 29, 1988, the Transportation Institute and the Seafarers International Union, as well as other individual plaintiffs, filed a lawsuit against the U.S. Coast Guard and James H. Burnley IV, then Secretary of Transportation (Civil Action No. 88-3429), in the United States District Court for the District of Columbia. The lawsuit sought declaratory and injunctive relief against the Coast Guard's Final Rule which required private citizens employed aboard commercial vessels to be subject to government-compelled drug testing even if those individuals were not suspected of drug use.

On December 18, 1989, the District Court enjoined the Coast Guard from implementing that part of the drug testing rules which required employers to initiate programs for random drug testing of all crewmembers as described in the November 21, 1988, Final Rule. The Final Rule has required, with limited exceptions, that all crewmembers serving aboard a vessel be subject to random drug testing. The rule was based on the concept that random testing was warranted not only for those crewmembers whose ordinary duties directly affected the safe navigation and operation of a vessel but also for other crewmembers who, in an emergency, were assigned tasks critical to the safety of the vessel and its passengers. In his opinion, District Court Judge Thomas F. Hogan approved the concept of random drug testing but held that the random drug testing regulations as written in the November 21, 1988, Final Rule could not be sustained under the Fourth Amendment because no clear, direct nexus between the nature of an employee's duty and an irreversible and calamitous consequence has been demonstrated. The Court was not convinced that the immediacy or gravity of the potential safety threat was sufficient to mandate random drug testing for all employees covered in the Coast Guard's regulations. However, Judge Hogan acknowledged "that some crewmembers within the currently drawn regulations perform duties so directly tied to safety, that they could constitutionally be required to undergo random testing." Judge Hogan's decision left the Coast Guard free to promulgate new random drug testing regulations applicable only to those crewmembers whose duties have a clear and direct nexus to the safety concerns of the government. In response to Judge Hogan's decision, on December 26, 1989, the Coast Guard published a Final Rule suspending implementation of random drug testing by marine employers until further notice. (54 FR 52943)

On July 27, 1990, the Coast Guard published a Notice of Proposed Rulemaking (the "NPRM") to require random chemical drug testing only for those commercial vessel personnel who perform ordinary duties directly affecting the safe operation and navigation of the vessel and, on vessels carrying passengers, who are assigned emergency duties making them directly responsible for the safety to passengers (55 FR 30886). The NPRM also proposed removing certain drilling industry personnel from maritime industry drug testing program coverage.

This Final Rule contains the Coast Guard's random chemical drug testing regulations for the maritime industry. It requires chemical testing for dangerous drugs on a random basis (random testing) of crewmembers on inspected vessels who occupy a position, or perform the duties and functions of a position, required by the vessel's Certificate of Inspection; who perform the duties and functions of patrolmen or watchmen; or who are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies. The rule also requires random testing of crewmembers on uninspected vessels who are required by law or regulation to hold a license issued by the Coast Guard in order to perform their duties on the vessel; who perform duties and functions directly related to the safe operation of the vessel; who perform the duties and functions of patrolmen or watchmen; or who are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies. This Final Rule removes industrial personnel on

industrial vessels from all requirements under the maritime transportation industry drug testing program contained in 46 CFR part 16.

**Discussion of Comments and Changes**

The Coast Guard received 52 written comments in response to the notice of proposed rulemaking. The written comments on the July 27, 1990, NPRM addressed a wide variety of issues. All comments were considered, despite the fact that some were received after the close of the applicable comment period.

**Public Hearings**

One commenter requested that public hearings be held in various cities so that affected individuals would have an opportunity to testify. The Coast Guard believes that all interested parties have had ample opportunity to express their views regarding this rulemaking and that public hearings would not have been of substantial benefit to the development of this rule.

**Definitions**

The Coast Guard has combined the proposed definitions of vessel operation and vessel navigation into a single definition. For many years, the Coast Guard has considered the functions and duties listed under "vessel navigation" in the NPRM to be essential parts of vessel operation. In fact, 46 U.S.C. 8101 requires the Certificate of Inspection (COI) issued to an inspected vessel to "state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation." Because no particular purpose would be served by separating navigation duties from other operation duties in this rulemaking, and to eliminate possible confusion, the definitions of "vessel navigation" and "vessel operation" in the NPRM have been replaced by a single definition, "operation", in the final rule.

Numerous commenters objected to the proposed language "providing for the safety of passengers on board" in the definition of vessel operations because that phrase is vague and could be interpreted very broadly. The Coast Guard agrees with these commenters, and has clarified the language in the final rule. As indicated previously, the Coast Guard believes that any crewmember assigned direct responsibility for passenger safety should be subject to random testing. On inspected vessels, those crewmembers are, for the most part, required by and listed on the COI as patrolmen, watchmen and lifeboatmen. Any additional crewmembers who are specifically assigned these duties, whether or not they are listed on the COI and regardless of whether they perform these duties on an inspected vessel or an uninspected vessel, also should be subject to random testing. The language of the final rule, therefore, has been revised to include all crewmembers who perform duties as patrolmen or watchmen or who are "specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies." The Coast Guard believes that this language clearly identifies which crewmembers are subject to random testing by virtue of their assigned duties to ensure passenger safety.

One commenter urged that the definition of "operation" be broadened to include monitoring, maintenance, and operation of equipment intended for use in response to spills of oil and hazardous liquids because those duties are clearly and directly connected to "consequences that may be irreversible and calamitous." The Coast Guard does agree that the definition of "operations" should be so broadened. Oil spill cleanup operations are performed from many different types of vehicles, including commercial and non-commercial, inspected and uninspected vessels. On board a commercial vessel, persons who are involved solely in "cleanup operations" are industrial personnel and should be excepted from chemical drug testing required by part 16; while crewmembers with duties that directly affect the safe operation of the vessel would be subject to random testing. On non-commercial oil spill clean-up vessels, such as those owned and operated by federal, state, or local governments, these rules do not apply.

Two commenters indicated that "marine employer" needs to be more clearly defined. The commenters question whether the company that charters a vessel or the company that provides a vessel for charter bears the responsibility for random testing of the crewmembers. Clearly, the crewmembers' employer is responsible for implementing the drug testing programs required by these regulations. The Coast Guard believes that the definition in § 16.105 of "marine employer" as the owner, managing operator, charterer, agent, master, or person in charge of a vessel is sufficient for the purposes of these drug testing regulations. Each marine employer is responsible for implementing the regulations with regard to its employees. The Coast Guard does not believe that there are any peculiar employment arrangements in the maritime industry that prevent an employer from knowing who they employ or an employee from knowing who employs them. The intent of the regulations is to ensure that all covered crewmembers are appropriately tested and that the rule provides marine employers flexibility in providing for required testing. The Coast Guard does not intend to regulate contractual matters among operators, charterers, owners, etc., regarding compliance with these regulations.

**Crewmembers Subject to Random Testing**

In general, commenters representing an employee or union perspective opposed random testing or suggested a narrow definition of "crewmembers subject to random testing". Commenters representing a marine employer perspective generally suggested either a broad definition of "crewmembers subject to random testing" or that all crewmembers be random tested.

Several commenters suggested that all crewmembers on particular vessel types, such as large passenger vessels, oil tankers, inland towing vessels, or mobile offshore drilling units (MODUs) be subject to random testing. While the 1988 Final Rule required most of these crewmembers to be tested on a random basis, the Coast Guard cannot accept these suggestions because it is clear from Judge Hogan's ruling that a direct nexus between a crewmember's duties and vessel safety must exist in order to subject a crewmember to random testing. The Coast Guard cannot demonstrate that all crewmembers on any particular type of vessel have duties that directly affect the vessel's safety.

Some commenters suggested that on inspected vessels, only those crewmembers required by the COI be subject to random testing. Although the minimum required crew complement of an inspected vessel is listed (number and type of licensed, documented, and undocumented personnel) on the vessel's COI, the COI will rarely, if ever, be identical to the actual crewlist. When crewmembers in addition to those listed on the COI are engaged at the discretion of the vessel owner or operator to perform the same duties as those crewmembers listed on the COI, these additional crewmembers must be subject to random testing for the same reasons as COI listed personnel. The Coast Guard could not, therefore, limit the random testing requirements to only the crewmembers required by the COI. The requirement in the final rule that COI listed crewmembers be subject to random testing is only a threshold requirement for testing crewmembers on

inspected vessels. The marine employer must identify all other crewmembers who perform operations duties and ensure that they, too, are subject to random testing. We must, therefore, determine which duties on all vessels will subject a crewmember to random testing, based on the duties that a crewmember actually performs rather than on the type of vessel on which the crewmember serves. The Coast Guard has defined the types of duties which directly affect the safe operation of a vessel. The marine employer must identify which crewmembers perform these duties.

Several commenters requested that all crewmembers on uninspected inland towing vessels, including cooks, be subject to random testing. Some commenters indicated that cooks on these vessels routinely perform a variety of duties that involve the safe operation of the vessel, and that a cook's failure to perform his galley duties properly could result in food poisoning of the crew or in a galley fire that could spread and consume the vessel. Based on the comments received, however, the Coast Guard does not agree that all cooks should be subject to random testing. Most cooks do not have duties in addition to cooking and galley cleaning. The Coast Guard does not believe that cooking and galley cleaning alone have a sufficient tie to safe vessel operation to warrant random testing. However, those cooks on any type of vessel who have ordinary and routine duties (apart from cooking or galley cleaning) that are directly related to the safe operation of the vessel should be subject to random testing.

Two commenters indicated that all crewmembers onboard passenger vessels, including cabin stewards, waiters, porters, and entertainers, are directly responsible for passenger safety and should be subject to random testing. Another commenter indicated that all personnel on passenger vessels with emergency duties assigned on the vessels's station bill should be subject to random testing. The Coast Guard does not agree with these commenters. A crewmember's assignment to an emergency duty on the vessel's station bill is not sufficient reason to require the crewmember to be subject to random testing. The Coast Guard's position concerning emergency duties is that only those crewmembers who are assigned specific emergency duties which make them directly responsible for the safety of life of passengers should be subject to random testing. Direct responsibility for passenger safety must be assigned to and understood by a crewmember as a job function. Crewmembers who may simply "help out" in an emergency are not thereby subject to random testing. Of course, in an emergency, persons who are not otherwise subject to random testing are not precluded from providing assistance to passengers that is beyond their normal job requirements.

One commenter indicated that the NPRM does not include harbor pilots, and that they should be subject to random testing. The Coast Guard agrees that pilots should be subject to random testing. As stated in the NPRM, pilots perform the same duties as masters and deck watch officers, and also contribute knowledge of local port conditions. The NPRM envisioned that pilots would be subject to random drug testing because they perform vessel navigation duties. The final rule requires that harbor pilots be subject to random drug testing.

Two commenters indicated that wipers would be excluded from random testing. One commenter said that Judge Hogan had already concluded that a wiper's duties "were not so safety sensitive as to permit them to be subjected to random urinalysis." The other commenter said that the inclusion of the wiper "is not considered valid by definition of his job description. The job of the wiper at sea and in port (is) to do general cleaning and upkeep in the engine department spaces and assist in repair work." The Coast Guard does not believe that Judge Hogan's ruling concluded that a wiper should be excluded from random testing. Rather, the Coast Guard believes that the salient conclusion drawn by Judge Hogan was that the Government had not shown a direct nexus between the duties of wipers and the safety concerns of the Government. The Court expected the Coast Guard to show that nexus when it reformulated the regulations. However, in view of the comments received, the Coast Guard has reconsidered its original position regarding random testing of wipers. The Coast Guard agrees that the ordinary duties of a wiper are not so safety-sensitive as to require random testing. Generally, a wiper occupies an entry level position in the engine department, is not required by the COI, and, is closely supervised by other engine department personnel when performing safety-sensitive duties. In those few instances where wipers are required by the COI, they have been determined to be essential to the safe operation of the vessel. Accordingly, the Final Rule requires only those wipers who are specifically required by the COI, or who perform some other "operation" duty in addition to their duties as a wiper, to be subject to random testing.

After considering all the comments received, the Coast Guard has revised the NPRM's proposed wording to insure that this final rule clearly indicates which crewmembers on inspected vessels and uninspected vessels must be subject to random testing. Paragraph 16.230(a) treats crewmembers on inspected vessels, and paragraph 16.230(b) treats crewmembers on uninspected vessels.

**Industrial Personnel**

Two commenters noted that the NPRM, as written, could be misinterpreted to propose random testing of industrial personnel because they perform duties listed under "Vessel Operations." The Coast Guard agrees that some confusion might have resulted from the wording of the NPRM, and appropriate changes have been made to the Final Rule to clarify its coverage. Industrial personnel are carried on board an industrial vessel for the sole purpose of carrying out the industrial business or functions of the vessel, and they do not routinely perform duties that directly affect the safe operation of the vessel. These persons are, therefore, excepted from chemical drug testing required by part 16. Although industrial personnel may perform some of the types of duties listed under "vessel operations," such as operation of deck machinery, the duties they perform involve the industrial functions of the vessel, not the navigation or operation of the vessel as a vessel. The Coast Guard has had a definition of industrial personnel in 46 CFR 90.10–15 for many years, i.e., "This term means every person carried on board an industrial vessel for the sole purpose of carrying out the industrial business or functions of the industrial vessel. Examples of industrial personnel include tradesmen, such as mechanics, plumbers, electricians, and welders; laborers, such as wreckers and construction workers; and other persons, such as supervisors, engineers, technicians, drilling personnel, and divers."

Industrial personnel are not required by the Certificate of Inspection to be on board a vessel; they are allowed to be on board to perform industrial functions. However, some confusion might remain regarding those persons who perform industrial functions, but who also are properly trained and documented to serve as lifeboatmen. When such persons are serving as a lifeboatmen required by the COI, they cannot be excluded under the "industrial personnel" provision because they are

not on board for the sole purpose of carrying out industrial functions. They perform the duties of a lifeboatman, and are required by the COI; they are therefore subject to random testing.

Two commenters noted that proposed 16.105(b)(3) would apply only to industrial personnel on mobile offshore drilling units, and that industrial personnel on other vessels, such as derrick barges and pipelay barges, should be treated equally. The Coast Guard agrees, and § 16.105(b)(3) has been rewritten to include industrial personnel on any industrial vessel.

**Implementation Date**

The Coast Guard specifically sought comment on problems associated with implementation of this Final Rule within 30 days after publication in the **Federal Register**.

Note: The Notice of Proposed Rulemaking published on July 27, 1990, stated, as a result of a printing error, that the random testing program was to be implemented not later than August 27, 1990. The error was corrected by the **Federal Register** of August 1, 1990.

Five commenters requested that the effective date of the rules be more than 30 days from publication in the **Federal Register**. Three commenters suggested 90 days, one commenter suggested 45 days, and one commenter suggested "more than 30 days." One commenter indicated that more than 30 days time is necessary for companies to inform their employees of the new random testing requirements, establish internal policies, and ensure that all mechanisms for compliance are in place. When the NPRM was published, the Coast Guard had anticipated that final rules would be in place in sufficient time for employers with 50 or fewer employees to implement a random testing program as originally scheduled on December 21, 1990. However, it was not possible to complete a final rule on the schedule that had been anticipated. In view of the comments received, the Coast Guard agrees that additional time may be necessary for all employers to implement a random testing program. Accordingly, § 16.205 (a), (b), and (c) have been revised to require that all random testing programs be in place by October 1, 1991.

**Other Employer Drug Testing Programs**

Two commenters requested that the final rule specifically state that it does not preempt other drug testing programs implemented by employers. The Coast Guard does not believe that it is necessary for the final rule to contain such a statement. The authority for these rules is 46 U.S.C. 2103, 3306, 7101, 7301, and 7701, and 49 CFR 1.46. Employers must implement programs for chemical drug and alcohol testing of commercial vessel personnel in accordance with this rule. These rules do not preclude or limit additional drug testing programs established by employers under other authority.

**Regulatory Evaluation**

These regulations are considered to be non-major under Executive Order 12291. However, they are considered to be significant under the DOT regulatory policies and procedures (44 FR 11304; February 26, 1979) because of controversy surrounding random testing, substantial public interest, and litigation. The revision to 46 CFR part 16 serves to re-establish random drug testing requirements for those crewmembers aboard commercial vessels whose duties directly affect the vessel's safe operation. A regulatory evaluation of the economic impact of drug testing, including random testing, accompanied the November 21, 1988 Final Rule (53 FR 47064). Although this revision will reduce somewhat the recurring annual cost of implementation of drug testing by decreasing the number of persons subject to drug testing, there will be no appreciable decrease in the administrative costs to employers to conduct the overall program. The crewmembers who will be excluded by this revision perform only duties that are not considered safety sensitive. The Coast Guard believes their exclusion will decrease the cost of the random testing program but will not significantly decrease the benefits of random testing because these crewmembers have little impact on a vessel's safe operation.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 requires review of proposed rules to assess their impact on small business. The Coast Guard concluded that the November 21, 1988 Final Rule could have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis was placed in the docket (CGD 86-067) for the Final Rule (53 FR 47064). As discussed above, this revision will decrease the economic impact imposed by that rule by reducing somewhat the number of tests required to be conducted. However, the savings will be minimal because the proposed change will not eliminate other required tests or the need to have a drug testing program for personnel covered by that rule.

**Paperwork Reduction Act**

This rule contains no additional information collection requirements. The paperwork associated with this rule has been approved by the Office of Management and Budget under number 2115-0574.

**Federalism Implications**

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

**Environmental Assessment**

As required by section 2.B.2.1. of Commandant Instruction M16475.1B, the Coast Guard has considered this rule's environmental impact and concludes that the rule is categorically excluded from further environmental documentation.

**List of Subjects in 46 CFR Part 16**

Seamen, Marine safety, Navigation (water), Alcohol and alcoholic beverages, Drugs.

In consideration of the foregoing, the Coast Guard amends part 16 of title 46, Code of Federal Regulations as set forth below:

## PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. In § 16.105, the definition of "crewmember" is amended by revising paragraph (b) and a new definition "operation" is added in alphabetical order, to read as follows:

**§ 16.105 Definitions of terms used in this part.**

* * * * *

*Crewmember* means an individual who is:

* * * * *

(b) Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, except the following:

(1) Individuals on fish processing vessels who are primarily employed in the preparation of fish or fish products, or in a support position, and who have no duties that directly affect the safe operation of the vessel;

(2) Scientific personnel on an oceanographic research vessel;

(3) Individuals on industrial vessels who are industrial personnel, as defined in this chapter; and

(4) Individuals not required under part 15 of this subchapter who have no duties that directly affect the safe operation of the vessel.

* * * * *

*Operation* means to navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems. Operation includes:

(a) Determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position, or speed, and maintaining a lookout;

(b) Controlling, operating, monitoring, maintaining, or testing: the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches, windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment; and

(c) Mooring, anchoring, and line handling; loading or discharging of cargo or fuel; assembling or disassembling of tows; and maintaining the vessel's stability and watertight integrity.

* * * * *

3. Section 16.201 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 16.201 Application.**

* * * * *

(c) If an individual holding a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual's employer or prospective employer shall report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as practicable and shall be subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR part 5.

(d) If an individual who does not hold a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as possible.

* * * * *

4. Section 16.205 is revised to read as follows:

**§ 16.205 Implementation of chemical testing programs.**

(a) Each employer who employs more than 50 employees required to be tested under this part was required to implement the pre-employment testing program required by this part not later than June 21, 1989, and the serious marine incident and reasonable cause testing programs required by this part not later than December 21, 1989. The random testing program required by this part shall be implemented not later than October 1, 1991.

(b) Each employer who employs from 11 to 50 employees required to be tested under this part was required to implement the pre-employment, serious marine incident and reasonable cause testing programs required by this part not later than December 21, 1989. The random testing program required by this part shall be implemented not later than October 1, 1991.

(c) Each employer who employs 10 or fewer employees required to be tested under this part was required to implement the preemployment, serious marine incident and reasonable cause testing programs required by this part not later than December 21, 1990. The random testing program required by this part shall be implemented not later than October 1, 1991.

5. Section 16.230 is revised to read as follows:

**§ 16.230 Random testing requirements.**

(a) Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of crewmembers on inspected vessels who:

(1) Occupy a position, or perform the duties and functions of a position, required by the vessel's Certificate of Inspection;

(2) Perform the duties and functions of patrolmen or watchmen required by this chapter; or,

(3) Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.

(b) Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of crewmembers on uninspected vessels who:

(1) Are required by law or regulation to hold a license issued by the Coast Guard in order to perform their duties on the vessel;

(2) Perform duties and functions directly related to the safe operation of the vessel;

(3) Perform the duties and functions of patrolmen or watchmen required by this chapter; or,

(4) Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.

(c) Random selection of individual crewmembers means that every member of a given population has a substantially equal chance of selection on a statistically valid basis. The testing frequency and selection process shall be such that an employee's chance of selection continues to exist throughout his or her employment. Random selection may be accomplished by periodically selecting one or more vessels and testing all crewmembers covered by this section, provided each vessel subject to the marine employer's test program remains equally subject to selection.

(d) Marine employers may form or otherwise use sponsoring organizations, or may use contractors, to conduct the random chemical testing programs required by this part.

(e) Each marine employer shall ensure that crewmembers are tested on a random basis at an annual rate of not less than 50 percent.

(f) An individual may not be engaged or employed, including self-employment, on a vessel in a position as master, operator, or person in charge for which a license or merchant mariner's document is required by law or regulation unless all crewmembers covered by this section are subject to the random testing requirements of this section.

Dated: June 28, 1991.

**J. W. Kime,**

*Admiral, U.S. Coast Guard Commandant.*

[FR Doc. 91-16101 Filed 7-5-91; 8:45 am]

BILLING CODE 4910-14-M

federal register

Monday
July 8, 1991

# Part VII

# The President

Presidential Determination No. 91-43—Determination Under Section 405(a) of the Trade Act of 1974, as Amended—the Republic of Bulgaria

Presidential Determination No. 91-44—Determination Under Section 405(a) of the Trade Act of 1974, as Amended—the Mongolian People's Republic

Memorandum of June 25—Delegation of Authority Regarding Missile Technology Proliferation

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

# Presidential Documents

Title 3—

The President

Presidential Determination No. 91–43 of June 24, 1991

## Determination Under Section 405(a) of the Trade Act of 1974, as Amended—the Republic of Bulgaria

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act, that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
*Washington, June 24, 1991.*

[FR Doc. 91–16382
Filed 7–5–91; 11:39 am]
Billing code 3195–01–M

**Editorial note:** For the President's letter to Congressional leaders on trade with Bulgaria, see the *Weekly Compilation of Presidential Documents* (vol. 27, p. 841).

# Presidential Documents

**Presidential Determination No. 91–44 of June 24, 1991**

## Determination Under Section 405(a) of the Trade Act of 1974, as Amended—the Mongolian People's Republic

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act, that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and to publish it in the **Federal Register.**

THE WHITE HOUSE.
*Washington, June 24, 1991.*

[FR Doc. 91–16381
Filed 7–5–91; 11:40 am]
Billing code 3195–01–M

**Editorial note:** For the President's letter to Congressional leaders on trade with Mongolia, see the *Weekly Compilation of Presidential Documents* (vol. 27, p. 843).

# Presidential Documents

Memorandum of June 25, 1991

## Delegation of Authority Regarding Missile Technology Proliferation

**Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, [and] the Secretary of Commerce**

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 1701–1704 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510) (the Act), I hereby make the following delegations:

1. The authority and duties vested in me by sections 72 and 73 of the Arms Export Control Act (22 U.S.C. 2797a and b) and section 1704 of the Act (22 U.S.C. 2797 note) are delegated to the Secretary of State, except that:

a. The authority vested in me to make determinations with respect to violations by U.S. persons of the Export Administration Act of 1979 under section 72(a)(1) is delegated to the Secretary of Commerce.

b. The authority vested in me to deny certain U.S. Government contracts as provided in sections 73(a)(2)(A)(i) and 73(a)(2)(B)(i), pursuant to a determination made under section 73(a)(1), as well as the authority vested in me to make the findings provided in sections 72(c), 73(f), and 73(g)(1), are delegated to the Secretary of Defense. Waivers based upon findings made pursuant to sections 72(c) and 73(f) shall be issued, transmitted to Congress, and notified to the Secretary of the Treasury as appropriate by the Secretary of State.

c. The authority vested in me to prohibit certain imports as provided in section 73(a)(2)(C), pursuant to a determination made by the Secretary of State under such section, and the obligation to implement the exceptions provided in section 73(g), are delegated to the Secretary of the Treasury.

2. The authority and duties vested in me by section 1702 of the Act and section 11B of the Export Administration Act of 1979 (50 U.S.C. App. 2410b) are delegated to the Secretary of Commerce, except that:

a. The authority and duties vested in me by sections 11B(b)(1)(A) (insofar as such section authorizes determinations with respect to violations by U.S. persons of the Arms Export Control Act), 11B(b)(1)(B)(iii) (insofar as such section authorizes determinations regarding activities by foreign persons), and 11B(b)(5) are delegated to the Secretary of State.

b. The authority vested in me to make the findings provided in sections 11B(a)(3), 11B(b)(6), and 11B(b)(7)(A) are delegated to the Secretary of Defense. Waivers based upon findings made pursuant to sections 11B(a)(3) and 11B(b)(6) shall be issued, transmitted to Congress, and notified to the Secretary of the Treasury as appropriate by the Secretary of Commerce and Secretary of State, respectively.

c. The authority vested in me to prohibit certain imports as provided in section 11B(b)(1)(B)(iii), pursuant to a determination made by the Secretary of State under such section, and the obligation to implement the exceptions provided in section 11B(b)(7), are delegated to the Secretary of the Treasury.

All functions delegated herein shall be exercised in consultation among the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate.

The functions delegated herein may be redelegated as appropriate. Regulations necessary to carry out the functions delegated herein may be issued as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
*Washington, June 25, 1991.*

[FR Doc. 91-16383
Filed 7-5-91; 11:39 am]
Billing code 3195-01-M

# Reader Aids

Federal Register

Vol. 56, No. 130

Monday, July 8, 1991

## INFORMATION AND ASSISTANCE

**Federal Register**

| | |
|---|---|
| Index, finding aids & general information | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections to published documents | 523-5237 |
| Document drafting information | 523-5237 |
| Machine readable documents | 523-3447 |

**Code of Federal Regulations**

| | |
|---|---|
| Index, finding aids & general information | 523-5227 |
| Printing schedules | 523-3419 |

**Laws**

| | |
|---|---|
| Public Laws Update Service (numbers, dates, etc.) | 523-6641 |
| Additional information | 523-5230 |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the Presidents | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**The United States Government Manual**

| | |
|---|---|
| General information | 523-5230 |

**Other Services**

| | |
|---|---|
| Data base and machine readable specifications | 523-3408 |
| Guide to Record Retention Requirements | 523-3187 |
| Legal staff | 523-4534 |
| Library | 523-5240 |
| Privacy Act Compilation | 523-3187 |
| Public Laws Update Service (PLUS) | 523-6641 |
| TDD for the hearing impaired | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, JULY

29889-30306.....1
30307-30492.....2
30483-30678.....3
30679-30856.....5
30857-31042.....8

## CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Administrative Orders:**
Memorandums:
June 25, 1991.....31041
Presidential Determinations:
No. 91-42 of June 21, 1991.....30483
No. 91-43 of June 24, 1991.....31037
No. 91-44 of June 24, 1991.....31039
**Proclamations:**
6310.....30303
6311.....30307
6312.....30855
**Executive Orders:**
12473 (See EO 12767).....30283
12484 (See EO 12767).....30283
12550 (See EO 12767).....30283
12586 (See EO 12767).....30283
12700 (Amended by EO 12768).....30301
12708 (See EO 12767).....30283
12767.....30283
12768.....30301

**5 CFR**

**Proposed Rules:**
842.....30701
843.....30701

**7 CFR**

58.....30485
220.....30309
301.....29889
458.....30489
1530.....30857
1944.....30311, 30494
**Proposed Rules:**
28.....30618
210.....30339
235.....30339
245.....30339
800.....29907, 30342
810.....29907, 30342
910.....30878, 30879
916.....30881
917.....30881
1211.....30517
1421.....29912
1943.....30347
1951.....30347
1980.....30347
3400.....30254

**8 CFR**

338.....30679
**Proposed Rules:**
204.....30703

**10 CFR**

**Proposed Rules:**
707.....30644

**12 CFR**

312.....29893
1618.....30836

**13 CFR**

107.....30850

**14 CFR**

39.....30313-30316, 30319-30324, 30680-30683
71.....30684, 30685
73.....30685
95.....30686
97.....30317
129.....30122
158.....30867
**Proposed Rules:**
39.....30350, 30351
71.....30353, 30354, 30618, 30883
73.....30355
91.....30618

**15 CFR**

8a.....29896
29a.....29896
29b.....29896

**16 CFR**

305.....30494
1000.....30495
**Proposed Rules:**
1700.....30355

**17 CFR**

200.....30036
201.....30036
210.....30036
229.....30036
230.....30036
239.....30036
240.....30036
249.....30036
260.....30036
269.....30036

**18 CFR**

284.....30692
401.....30500

**20 CFR**

**Proposed Rules:**
320.....30714

416 ..... 30884

**21 CFR**

558 ..... 29896
**Proposed Rules:**
101 ..... 30452, 30468
102 ..... 30452

**22 CFR**

40 ..... 30422
41 ..... 30422
42 ..... 30422
43 ..... 30422
44 ..... 30422

**24 CFR**

50 ..... 30325
58 ..... 30325
86 ..... 30430
**Proposed Rules:**
961 ..... 30176

**26 CFR**

**Proposed Rules:**
1 ..... 30718-30721
48 ..... 30359

**27 CFR**

**Proposed Rules:**
4 ..... 29913

**28 CFR**

0 ..... 30693
2 ..... 30867-30872
524 ..... 30676
**Proposed Rules:**
75 ..... 29914

**29 CFR**

500 ..... 30326
1600 ..... 30502

**30 CFR**

901 ..... 30502
**Proposed Rules:**
917 ..... 30722
920 ..... 30517

**32 CFR**

861 ..... 30327
**Proposed Rules:**
199 ..... 30360, 30887
228 ..... 30365

**33 CFR**

1 ..... 30242
100 ..... 29897-29899, 30507
117 ..... 30332
165 ..... 30334, 30507-30509
**Proposed Rules:**
100 ..... 29916

**34 CFR**

**Proposed Rules:**
361 ..... 30620

**36 CFR**

7 ..... 30694

**38 CFR**

36 ..... 29899
**Proposed Rules:**
3 ..... 30893

**40 CFR**

52 ..... 30335
82 ..... 30873
141 ..... 30264
142 ..... 30264
143 ..... 30264
180 ..... 29900
261 ..... 30192
262 ..... 30192
264 ..... 30192, 30200
265 ..... 30192, 30200
270 ..... 30192
271 ..... 30336
721 ..... 29902, 29903
**Proposed Rules:**
28 ..... 29996
52 ..... 29918
80 ..... 29919
86 ..... 30228
136 ..... 30519
260 ..... 30519
261 ..... 30519
264 ..... 30201
265 ..... 30201
280 ..... 30201
761 ..... 30201

**42 CFR**

442 ..... 30696
**Proposed Rules:**
417 ..... 30723

**43 CFR**

**Proposed Rules:**
11 ..... 30367
3160 ..... 29920
3810 ..... 30367
3820 ..... 30367
4700 ..... 30372

**44 CFR**

302 ..... 29903

**46 CFR**

16 ..... 31030
221 ..... 30654
**Proposed Rules:**
586 ..... 30373

**47 CFR**

73 ..... 30337, 30510-30512
94 ..... 30698
**Proposed Rules:**
Ch. I ..... 30373
73 ..... 30374, 30375, 30524-30526
76 ..... 30526, 30726

**48 CFR**

519 ..... 30618

**49 CFR**

40 ..... 30512
1051 ..... 30873
1220 ..... 30873
**Proposed Rules:**
571 ..... 30528

**50 CFR**

630 ..... 29905
641 ..... 30513
650 ..... 30514
663 ..... 30338
672 ..... 30874
675 ..... 30515, 30699, 30874
**Proposed Rules:**
642 ..... 29920
646 ..... 29922
651 ..... 29934
680 ..... 30893
685 ..... 30376

## LIST OF PUBLIC LAWS

**Last List July 3, 1991**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

**H.R. 2332/Pub. L. 102-65**

To amend the Immigration Act of 1990 to extend for 4 months the application deadline for special temporary protected status for Salvadorans. (July 2, 1991; 105 Stat. 322; 1 page) Price: $1.00

**H.J. Res. 259/Pub. L. 102-66**

Designating July 2, 1991, as "National Literacy Day". (July 2, 1991; 105 Stat. 323; 2 pages) Price: $1.00

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

| Title | Price | Revision Date |
|---|---|---|
| 1, 2 (2 Reserved) | $12.00 | Jan. 1, 1991 |
| 3 (1990 Compilation and Parts 100 and 101) | 14.00 | [1] Jan. 1, 1991 |
| 4 | 15.00 | Jan. 1, 1991 |
| **5 Parts:** | | |
| 1-699 | 17.00 | Jan. 1, 1991 |
| 700-1199 | 13.00 | Jan. 1, 1991 |
| 1200-End, 6 (6 Reserved) | 18.00 | Jan. 1, 1991 |
| **7 Parts:** | | |
| 0-26 | 15.00 | Jan. 1, 1991 |
| 27-45 | 12.00 | Jan. 1, 1991 |
| 46-51 | 17.00 | Jan. 1, 1991 |
| 52 | 24.00 | Jan. 1, 1991 |
| 53-209 | 18.00 | Jan. 1, 1991 |
| 210-299 | 24.00 | Jan. 1, 1991 |
| 300-399 | 12.00 | Jan. 1, 1991 |
| 400-699 | 20.00 | Jan. 1, 1991 |
| 700-899 | 19.00 | Jan. 1, 1991 |
| 900-999 | 28.00 | Jan. 1, 1991 |
| 1000-1059 | 17.00 | Jan. 1, 1991 |
| 1060-1119 | 12.00 | Jan. 1, 1991 |
| 1120-1199 | 10.00 | Jan. 1, 1991 |
| 1200-1499 | 18.00 | Jan. 1, 1991 |
| 1500-1899 | 12.00 | Jan. 1, 1991 |
| 1900-1939 | 11.00 | Jan. 1, 1991 |
| 1940-1949 | 22.00 | Jan. 1, 1991 |
| 1950-1999 | 25.00 | Jan. 1, 1991 |
| 2000-End | 10.00 | Jan. 1, 1991 |
| 8 | 14.00 | Jan. 1, 1991 |
| **9 Parts:** | | |
| 1-199 | 21.00 | Jan. 1, 1991 |
| 200-End | 18.00 | Jan. 1, 1991 |
| **10 Parts:** | | |
| 0-50 | 21.00 | Jan. 1, 1991 |
| 51-199 | 17.00 | Jan. 1, 1991 |
| 200-399 | 13.00 | [8] Jan. 1, 1987 |
| 400-499 | 20.00 | Jan. 1, 1991 |
| 500-End | 27.00 | Jan. 1, 1991 |
| 11 | 12.00 | Jan. 1, 1991 |
| **12 Parts:** | | |
| 1-199 | 13.00 | Jan. 1, 1991 |
| 200-219 | 12.00 | Jan. 1, 1991 |
| 220-299 | 21.00 | Jan. 1, 1991 |
| 300-499 | 17.00 | Jan. 1, 1991 |
| 500-599 | 17.00 | Jan. 1, 1991 |
| 600-End | 19.00 | Jan. 1, 1991 |
| 13 | 24.00 | Jan. 1, 1991 |
| **14 Parts:** | | |
| 1-59 | 25.00 | Jan. 1, 1991 |
| 60-139 | 21.00 | Jan. 1, 1991 |
| 140-199 | 10.00 | Jan. 1, 1991 |
| 200-1199 | 20.00 | Jan. 1, 1991 |
| 1200-End | 13.00 | Jan. 1, 1991 |
| **15 Parts:** | | |
| 0-299 | 12.00 | Jan. 1, 1991 |
| 300-799 | 22.00 | Jan. 1, 1991 |
| 800-End | 15.00 | Jan. 1, 1991 |
| **16 Parts:** | | |
| 0-149 | 5.50 | Jan. 1, 1991 |
| 150-999 | 14.00 | Jan. 1, 1991 |
| 1000-End | 19.00 | Jan. 1, 1991 |
| **17 Parts:** | | |
| 1-199 | 15.00 | Apr. 1, 1991 |
| 200-239 | 16.00 | Apr. 1, 1991 |
| 240-End | 23.00 | Apr. 1, 1990 |
| **18 Parts:** | | |
| 1-149 | 15.00 | Apr. 1, 1991 |
| 150-279 | 16.00 | Apr. 1, 1990 |
| 280-399 | 13.00 | Apr. 1, 1991 |
| *400-End | 9.00 | Apr. 1, 1991 |
| **19 Parts:** | | |
| 1-199 | 28.00 | Apr. 1, 1990 |
| *200-End | 9.50 | Apr. 1, 1991 |
| **20 Parts:** | | |
| 1-399 | 16.00 | Apr. 1, 1991 |
| 400-499 | 25.00 | Apr. 1, 1991 |
| 500-End | 28.00 | Apr. 1, 1990 |
| **21 Parts:** | | |
| 1-99 | 12.00 | Apr. 1, 1991 |
| 100-169 | 15.00 | Apr. 1, 1990 |
| 170-199 | 17.00 | Apr. 1, 1990 |
| 200-299 | 5.50 | Apr. 1, 1990 |
| 300-499 | 29.00 | Apr. 1, 1990 |
| 500-599 | 21.00 | Apr. 1, 1990 |
| 600-799 | 8.00 | Apr. 1, 1990 |
| 800-1299 | 18.00 | Apr. 1, 1990 |
| 1300-End | 7.50 | Apr. 1, 1991 |
| **22 Parts:** | | |
| 1-299 | 25.00 | Apr. 1, 1991 |
| 300-End | 18.00 | Apr. 1, 1990 |
| 23 | 17.00 | Apr. 1, 1990 |
| **24 Parts:** | | |
| 0-199 | 20.00 | Apr. 1, 1990 |
| 200-499 | 27.00 | Apr. 1, 1991 |
| 500-699 | 13.00 | Apr. 1, 1991 |
| 700-1699 | 24.00 | Apr. 1, 1990 |
| 1700-End | 13.00 | [4] Apr. 1, 1990 |
| 25 | 25.00 | Apr. 1, 1990 |
| **26 Parts:** | | |
| *§§ 1.0-1-1.60 | 17.00 | Apr. 1, 1991 |
| §§ 1.61-1.169 | 28.00 | Apr. 1, 1990 |
| §§ 1.170-1.300 | 18.00 | Apr. 1, 1990 |
| §§ 1.301-1.400 | 17.00 | Apr. 1, 1990 |
| *§§ 1.401-1.500 | 30.00 | Apr. 1, 1991 |
| §§ 1.501-1.640 | 16.00 | Apr. 1, 1991 |
| §§ 1.641-1.850 | 19.00 | [4] Apr. 1, 1990 |
| §§ 1.851-1.907 | 20.00 | Apr. 1, 1990 |
| §§ 1.908-1.1000 | 22.00 | Apr. 1, 1990 |
| §§ 1.1001-1.1400 | 18.00 | [4] Apr. 1, 1990 |
| §§ 1.1401-End | 24.00 | Apr. 1, 1990 |
| 2-29 | 21.00 | Apr. 1, 1990 |
| *30-39 | 14.00 | Apr. 1, 1991 |
| 40-49 | 13.00 | [9] Apr. 1, 1989 |
| *50-299 | 15.00 | Apr. 1, 1989 |
| 300-499 | 17.00 | Apr. 1, 1991 |
| 500-599 | 6.00 | [4] Apr. 1, 1990 |
| 600-End | 6.50 | Apr. 1, 1990 |
| **27 Parts:** | | |
| 1-199 | 24.00 | Apr. 1, 1990 |
| 200-End | 14.00 | Apr. 1, 1990 |
| 28 | 28.00 | July 1, 1990 |

| Title | Price | Revision Date |
|---|---|---|
| **29 Parts:** | | |
| 0–99 | 18.00 | July 1, 1990 |
| 100–499 | 8.00 | July 1, 1990 |
| 500–899 | 26.00 | July 1, 1990 |
| 900–1899 | 12.00 | July 1, 1990 |
| 1900–1910 (§§ 1901.1 to 1910.999) | 24.00 | July 1, 1990 |
| 1910 (§§ 1910.1000 to end) | 14.00 | July 1, 1990 |
| 1911–1925 | 9.00 | [5] July 1, 1989 |
| 1926 | 12.00 | July 1, 1990 |
| 1927–End | 25.00 | July 1, 1990 |
| **30 Parts:** | | |
| 0–199 | 22.00 | July 1, 1990 |
| 200–699 | 14.00 | July 1, 1990 |
| 700–End | 21.00 | July 1, 1990 |
| **31 Parts:** | | |
| 0–199 | 15.00 | July 1, 1990 |
| 200–End | 19.00 | July 1, 1990 |
| **32 Parts:** | | |
| 1–39, Vol. I | 15.00 | [6] July 1, 1984 |
| 1–39, Vol. II | 19.00 | [6] July 1, 1984 |
| 1–39, Vol. III | 18.00 | [6] July 1, 1984 |
| 1–189 | 24.00 | July 1, 1990 |
| 190–399 | 28.00 | July 1, 1990 |
| 400–629 | 24.00 | July 1, 1990 |
| 630–699 | 13.00 | [5] July 1, 1989 |
| 700–799 | 17.00 | July 1, 1990 |
| 800–End | 19.00 | July 1, 1990 |
| **33 Parts:** | | |
| 1–124 | 16.00 | July 1, 1990 |
| 125–199 | 18.00 | July 1, 1990 |
| 200–End | 20.00 | July 1, 1990 |
| **34 Parts:** | | |
| 1–299 | 23.00 | July 1, 1990 |
| 300–399 | 14.00 | July 1, 1990 |
| 400–End | 27.00 | July 1, 1990 |
| 35 | 10.00 | July 1, 1990 |
| **36 Parts:** | | |
| 1–199 | 12.00 | July 1, 1990 |
| 200–End | 25.00 | July 1, 1990 |
| 37 | 15.00 | July 1, 1990 |
| **38 Parts:** | | |
| 0–17 | 24.00 | July 1, 1990 |
| 18–End | 21.00 | July 1, 1990 |
| 39 | 14.00 | July 1, 1990 |
| **40 Parts:** | | |
| 1–51 | 27.00 | July 1, 1990 |
| 52 | 28.00 | July 1, 1990 |
| 53–60 | 31.00 | July 1, 1990 |
| 61–80 | 13.00 | July 1, 1990 |
| 81–85 | 11.00 | July 1, 1990 |
| 86–99 | 26.00 | July 1, 1990 |
| 100–149 | 27.00 | July 1, 1990 |
| 150–189 | 23.00 | July 1, 1990 |
| 190–259 | 13.00 | July 1, 1990 |
| 260–299 | 22.00 | July 1, 1990 |
| 300–399 | 11.00 | July 1, 1990 |
| 400–424 | 23.00 | July 1, 1990 |
| 425–699 | 23.00 | [5] July 1, 1989 |
| 700–789 | 17.00 | July 1, 1990 |
| 790–End | 21.00 | July 1, 1990 |
| **41 Chapters:** | | |
| 1, 1–1 to 1–10 | 13.00 | [7] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | 13.00 | [7] July 1, 1984 |
| 3–6 | 14.00 | [7] July 1, 1984 |
| 7 | 6.00 | [7] July 1, 1984 |
| 8 | 4.50 | [7] July 1, 1984 |
| 9 | 13.00 | [7] July 1, 1984 |
| 10–17 | 9.50 | [7] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | 13.00 | [7] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | 13.00 | [7] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | 13.00 | [7] July 1, 1984 |
| 19–100 | 13.00 | [7] July 1, 1984 |
| 1–100 | 8.50 | July 1, 1990 |
| 101 | 24.00 | July 1, 1990 |
| 102–200 | 11.00 | July 1, 1990 |
| 201–End | 13.00 | July 1, 1990 |
| **42 Parts:** | | |
| 1–60 | 16.00 | Oct. 1, 1990 |
| 61–399 | 5.50 | Oct. 1, 1990 |
| 400–429 | 21.00 | Oct. 1, 1990 |
| 430–End | 25.00 | Oct. 1, 1990 |
| **43 Parts:** | | |
| 1–999 | 19.00 | Oct. 1, 1990 |
| 1000–3999 | 26.00 | Oct. 1, 1990 |
| 4000–End | 12.00 | Oct. 1, 1990 |
| 44 | 23.00 | Oct. 1, 1990 |
| **45 Parts:** | | |
| 1–199 | 17.00 | Oct. 1, 1990 |
| 200–499 | 12.00 | Oct. 1, 1990 |
| 500–1199 | 26.00 | Oct. 1, 1990 |
| 1200–End | 18.00 | Oct. 1, 1990 |
| **46 Parts:** | | |
| 1–40 | 14.00 | Oct. 1, 1990 |
| 41–69 | 14.00 | Oct. 1, 1990 |
| 70–89 | 8.00 | Oct. 1, 1990 |
| 90–139 | 12.00 | Oct. 1, 1990 |
| 140–155 | 13.00 | Oct. 1, 1990 |
| 156–165 | 14.00 | Oct. 1, 1990 |
| 166–199 | 14.00 | Oct. 1, 1990 |
| 200–499 | 20.00 | Oct. 1, 1990 |
| 500–End | 11.00 | Oct. 1, 1990 |
| **47 Parts:** | | |
| 0–19 | 19.00 | Oct. 1, 1990 |
| 20–39 | 18.00 | Oct. 1, 1990 |
| 40–69 | 9.50 | Oct. 1, 1990 |
| 70–79 | 18.00 | Oct. 1, 1990 |
| 80–End | 20.00 | Oct. 1, 1990 |
| **48 Chapters:** | | |
| 1 (Parts 1–51) | 30.00 | Oct. 1, 1990 |
| 1 (Parts 52–99) | 19.00 | Oct. 1, 1990 |
| 2 (Parts 201–251) | 19.00 | Oct. 1, 1990 |
| 2 (Parts 252–299) | 15.00 | Oct. 1, 1990 |
| 3–6 | 19.00 | Oct. 1, 1990 |
| 7–14 | 26.00 | Oct. 1, 1990 |
| 15–End | 29.00 | Oct. 1, 1990 |
| **49 Parts:** | | |
| 1–99 | 14.00 | Oct. 1, 1990 |
| 100–177 | 27.00 | Oct. 1, 1990 |
| 178–199 | 22.00 | Oct. 1, 1990 |
| 200–399 | 21.00 | Oct. 1, 1990 |
| 400–999 | 26.00 | Oct. 1, 1990 |
| 1000–1199 | 17.00 | Oct. 1, 1990 |
| 1200–End | 19.00 | Oct. 1, 1990 |
| **50 Parts:** | | |
| 1–199 | 20.00 | Oct. 1, 1990 |
| 200–599 | 16.00 | Oct. 1, 1990 |
| 600–End | 15.00 | Oct. 1, 1990 |
| CFR Index and Findings Aids | 30.00 | Jan. 1, 1991 |
| Complete 1991 CFR set | 620.00 | 1991 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 185.00 | 1988 |
| Complete set (one-time mailing) | 185.00 | 1989 |
| Subscription (mailed as issued) | 188.00 | 1990 |
| Subscription (mailed as issued) | 188.00 | 1991 |

| Title | Price | Revision Date |
|---|---|---|
| Individual copies | 2.00 | 1991 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 31, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.