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# federal register

Wednesday
February 12, 1992

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

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## 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.

### WASHINGTON, DC

**WHEN:** February 28, at 9:00 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** 202–523–5240.
**DIRECTIONS:** North on 11th Street from Metro Center to corner of 11th and L Streets

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# Rules and Regulations

Federal Register
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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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91-NM-159-AD; Amendment 39-8164; AD 92-03-09]**

### Airworthiness Directives; SAAB-Scania Model SF-340A and SAAB 340B Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A and SAAB 340B series airplanes, which requires the disconnection of electrical power to the refuel/defuel panel lights. This amendment is prompted by reports of arcing and smoke emanating from the refuel/defuel panel during refueling. This condition, if not corrected, could result in a fire during the refueling process.

**EFFECTIVE DATE:** March 18, 1992.

**ADDRESSES:** Information pertaining to this rulemaking action may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Model SAAB-Scania Model SF-340A and SAAB 340B series airplanes, was published in the Federal Register on October 4, 1991 (56 FR 50301). That action proposed to require the disconnection of electrical power to the refuel/defuel panel lights.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter agreed with the proposed requirements of this AD.

After a careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, as proposed.

This is considered interim action until a new refuel/defuel lighted front panel is developed and available, at which time the FAA may consider further rulemaking.

It is estimated that 121 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,965.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

### PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-03-09 Saab-Scania: Amendment 39-8164. Docket 91-NM-159-AD.

Applicability: Model SF-340A and 340B series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire during the refueling process, accomplish the following:

(a) Within 30 days after the effective date of this AD, disconnect the lighting to the refuel/defuel panel lights as follows:

(1) Remove the refuel/defuel panel assembly, P/N 7239160-502, -503, or -504, as applicable, in accordance with the Airplane Maintenance Manual (AMM) 28-21-05.

(2) With the refuel/defuel panel removed, loosen the four screws securing the lighting panel to the front, and remove the rear cover.

(3) Locate the lighting panel jack 30 QA under the rear cover, and remove the screw securing the wire QA636-20. Remove the wire from Jack 30 QA, and reinstall the screw.

(4) Cap and stow wire QA636-20, and reassemble the refuel/defuel panel.

(5) Placard the lighting panel with "Lights inop."

(6) Reinstall and test the refuel/defuel panel in accordance with AMM 28-21-05.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(d) This amendment (39-8164), AD 92-03-09, becomes effective March 18, 1992.

Issued in Renton, Washington, on January 13, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3350 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510 and 520

### Animal Drugs, Feeds, and Related Products; Change of Sponsor

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Farmers Friend Mineral Co., Inc., to Elanco Animal Health, a Division of Eli Lilly and Co.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

**SUPPLEMENTARY INFORMATION:** Farmers Friend Mineral Co., Inc., suite 1, 120 Village Sq., Louisville, KY 40243, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 119-823 for monensin-mineral granules to Elanco Animal Health, a Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285. The agency is amending the regulations in 21 CFR 520.1448b(b) to reflect this change. Also, the regulations are amended in 21 CFR 510.600 (c)(1) and (c)(2) by removing Farmers Friend Mineral Co., because the firm is no longer the sponsor of any approved NADA's.

**List of Subjects in 21 CFR**

*Part 510*

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

*Part 520*

Animal drugs.

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

### PART 510—NEW ANIMAL DRUGS

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

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Farmers Friend Mineral Co., Inc." and in the table in paragraph (c)(2) by removing the entry "030239".

### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

**§ 520.1448b [Amended]**

2. Section 520.1448b *Monensin-mineral granules* is amended in paragraph (b) by removing the number "030239" and adding in its place "000986".

Dated: February 6, 1992.

**Robert Furrow,**

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

[FR Doc. 92-3303 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-01-M

### 21 CFR Parts 522 and 556

### Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trenbolone Acetate and Estradiol in Combination; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that amended the animal drug regulations to reflect approval of a new animal drug application (NADA 140-897) for use of trenbolone acetate and estradiol in combination in subcutaneous ear implants. The final rule incorrectly indicated that the NADA is sponsored by Hoechst-Roussel Agri-Vet Co. and supplied the incorrect drug labeler code. The correct sponsor is Roussel-UCLAF. This document corrects those errors.

**EFFECTIVE DATE:** December 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8638.

In FR Doc. 91-30103, appearing at page 67175 in the **Federal Register** of Monday, December 30, 1991, the following corrections are made:

1. On the same page, in the first column, in the "**SUMMARY**" section, lines 5 and 6, and in the "**SUPPLEMENTARY INFORMATION**" section, lines 1 and 2, "Hoechst-Roussel Agri-Vet Co." is corrected to read "Roussel-UCLAF".

**§ 522.2477 [Corrected]**

2. On the same page, in the third column, in § 522.2477 *Trenbolone acetate and estradiol in combination*, in paragraph (b), "012799" is corrected to read "012579".

Dated: February 6, 1992.

**Richard H. Teske,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 92-3302 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-01-M

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Certain Drug Combinations Involving Melengestrol Acetate, Monensin, Lasalocid, and Tylosin

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three supplemental new animal drug applications (NADA's) filed by The Upjohn Co. The supplemental NADA's provide for the use of separately approved Type A medicated articles containing melengestrol acetate (MGA) (dry forms only), monensin, lasalocid, and tylosin to manufacture certain combination drug, dry, pelleted Type B medicated feeds for use in making Type C medicated feeds. The feeds are for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and reduced incidence of liver abscesses.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Warner J. Caldwell, Center For Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8638.

**SUPPLEMENTARY INFORMATION:** The Upjohn Co., Kalamazoo, MI 49001, filed three supplemental NADA's providing for combining separately-approved MGA (dry forms only), monensin sodium, lasalocid sodium, and tylosin phosphate Type A medicated articles to manufacture the following dry, pelleted Type B medicated feeds: NADA 138-792, MGA plus monensin, plus tylosin; NADA 138-904, MGA plus lasalocid, plus tylosin; and NADA 138-995, MGA plus tylosin.

The dry, pelleted Type B medicated feeds are used to make Type C medicated feeds for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and reduced incidence of liver abscesses. The supplemental NADA's are approved as of February 12, 1992. Section 558.342 (21 CFR 558.342) is amended by revising paragraphs (c)(4)(ii), (c)(5)(ii), and (c)(6)(ii), and § 558.355 is amended by adding new paragraph (f)(3)(viii) to reflect the approvals.

In the Federal Register of April 5, 1991 (56 FR 14020), FDA amended § 558.342 (c)(4)(ii), (c)(5)(ii), and (c)(6)(ii) to state that the regulation does not provide for tylosin in a medicated feed at a concentration greater than 40 grams per ton with other drugs. With these amendments to the regulations, that statement is no longer correct. Therefore, that statement is being removed from the regulation.

These are new animal drugs used in Type A medicated articles to make Type B and C medicated feeds. MGA is a Category II drug which, as provided in § 558.4, requires an approved form FDA 1900 for making a Type B or C medicated feed from a Type A medicated article. Therefore, an approved form FDA 1900 is required for making a Type B or C medicated feed containing MGA in various combinations with monensin, lasalocid, and tylosin as in the approved subject NADA's and in the regulations in § 558.342, as revised.

Approval of these supplements, which provide for the use of a different physical form of Type B feeds, did not require reevaluation of the safety or effectiveness data supporting the NADA's, and a freedom of information summary is not required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), none of these supplements qualifies for marketing exclusivity because no new clinical or field investigations and no new human food safety studies were essential to the approval of these supplements nor were they conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

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

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

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

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

2. Section 558.342 is amended by revising paragraphs (c)(4)(ii), (c)(5)(ii), and (c)(6)(ii) to read as follows:

**§ 558.342 Melengestrol acetate.**

* * * * *

(c) * * *

(4) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter. Withdraw melengestrol acetate 48 hours prior to slaughter. Melengestrol acetate and tylosin as provided by Nos. 000009 and 000986, respectively, in § 510.600(c) of this chapter. To administer 0.25 to 0.50 milligram of melengestrol acetate with 90 milligrams of tylosin per head per day:

(A) Add 0.5 to 2.0 pounds per head per day of a liquid or dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate per pound to a medicated feed containing 8 to 10 grams of tylosin per ton; or

(B) Add 0.5 to 2.0 pounds per head per day of a liquid or dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate per pound to 4.5 to 18 pounds of a dry medicated feed containing 10 to 40 grams of tylosin per ton; or

(C) Add 0.5 to 2.0 pounds per head per day of a dry pelleted medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate (from a dry Type A article) plus 45 to 180 milligrams of tylosin per pound to a ration of nonmedicated feed.

(5) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter. The liquid medicated feeds are required to be manufactured in accordance with § 558.355(f)(3)(i). Withdraw melengestrol acetate 48 hours prior to slaughter. Melengestrol acetate as provided by No. 000009 and monensin and tylosin as provided by No. 000986 in § 510.600(c) of this chapter. To administer 0.25 to 0.50 milligram of melengestrol acetate to 50 to 360 milligrams of monensin plus 90 milligrams of tylosin per head per day:

(A) Add 0.5 to 2.0 pounds per head per day of a liquid or dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate per pound to a medicated feed containing 5 to 30 grams of monensin and 8 to 10 grams of tylosin per ton; or

(B) Add 0.5 to 2.0 pounds per head per day of a liquid or dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate plus 25 to 720 milligrams of monensin per pound to 4.5 to 18 pounds of a dry medicated feed containing 10 to 40 grams of tylosin per ton; or

(C) Add 0.5 to 2.0 pounds per head per day of a dry pelleted medicated feed containing 0.125 to 1.0 milligram melengestrol acetate (from a dry Type A article), 25 to 600 milligrams of monensin, and 45 to 180 milligrams of tylosin per pound to a ration of nonmedicated feed.

(6) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter. The liquid medicated feeds are required to be manufactured in accordance with § 558.311(d). Withdraw melengestrol acetate 48 hours prior to slaughter. Lasalocid, melengestrol acetate, and tylosin as provided by Nos. 000004, 000009, and 000986, respectively, in § 510.600(c) of this chapter. To administer 0.25 to 0.50 milligram of melengestrol acetate plus 100 to 360 milligrams of lasalocid plus 90 milligrams of tylosin per head per day:

(A) Add 0.5 to 2.0 pounds per head per day of a liquid or dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate per pound to a medicated feed containing 10 to 30 grams of lasalocid and 8 to 10 grams of tylosin per ton; or

(B) Add 0.5 to 2.0 pounds per head per day of a liquid or dry medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate plus 50 to 720 milligrams of lasalocid per pound to 4.5 to 18 pounds of a dry medicated feed

containing 10 to 40 grams of tylosin per ton; or

(C) Add 0.5 to 2.0 pounds per head per day of a dry pelleted medicated feed containing 0.125 to 1.0 milligram of melengestrol acetate (from a dry Type A article), 50 to 720 milligrams of lasalocid, and 45 to 180 milligrams of tylosin per pound to a ration of nonmedicated feed.

3. Section 558.355 is amended by adding new paragraph (f)(3)(viii) to read as follows:

**§ 558.355 Monensin.**

* * * * *

(f) * * *

(3) * * *

(viii) *Additional combinations.* Monensin may be used for heifers being fed in confinement for slaughter with melengestrol acetate with or without tylosin as in § 558.342. Medicated feeds containing melengestrol acetate are required to be withdrawn 48 hours prior to slaughter.

* * * * *

Dated: February 6, 1992.

**Richard H. Teske,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 92-3301 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[T.D. 8366]**

**RIN 1545-AN52**

### Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to the final regulations (T.D. 8366), which were published Monday, September 30, 1991 (56 FR 49512). The regulations related to real estate mortgage investment conduits (REMICs).

**EFFECTIVE DATE:** September 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** James W.C. Canup, (202) 566-6624 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of these corrections, prescribe the manner in which an entity elects status as a REMIC for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC.

#### Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8366), which were the subject of FR Doc. 91-22848, is corrected as follows:

**§ 1.6049-7 [Corrected]**

**Par. 1.** On page 49518, column two, following the instructional Par. 7., in § 1.6049-7, the first line of the section heading, the language "*§ 1.6049 Returns of information with*" is corrected to read "*§ 1.6049-7 Returns of information with*".

**Par. 2.** On page 49522, column one, in § 1.6049-7, paragraph (f)(4), line 5, the language "section with respect to certain holders of" is corrected to read "with respect to certain holders of".

**Par. 3.** On page 49522, column one, in § 1.6049-7, paragraph (f)(5)(i), line 6, the language "(f) of to be furnished to any person for a" is corrected to read "(f) to be furnished to any person for a".

**Par. 4.** On page 49522, column one, in § 1.6049-7, paragraph (f)(6)(i)(A), in lines 8 and 9, the language "and (f)(4) of this section, if applicable, of this section, or" is corrected to read "and (f)(4) of this section, if applicable, or".

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-3211 Filed 2-11-92; 8:45 am]

BILLING CODE 4830-01-M

### 26 CFR Parts 1 and 602

**[T.D. 8380]**

**RIN 1545-AP76**

### Treatment of Partnership Liabilities; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to Treasury Decision 8380, which was published in the **Federal Register** for Monday, December 23, 1991 (56 FR 66348). The final regulations relate to the treatment of partnership liabilities.

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

**FOR FURTHER INFORMATION CONTACT:** Mary A. Berman (202) 566-3440 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of these corrections added new regulation §§ 1.752-0 through 1.752-5 to the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986 and removed existing §§ 1.752-0T through 1.752-4T.

#### Need for Correction

As published, T.D. 8380 contains errors which may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of final regulations (T.D. 8380), which was the subject of FR Doc. 91-30596, is corrected as follows:

1. On page 66350, column 1, in the preamble under the heading "F. Effective Dates", second full paragraph, line 7, the language "regulations: (1) § 1.751-1 (TD 6175 and" is corrected to read "regulations: (1) § 1.752-1 (TD 6175 and".

**§ 1.752-2 [Corrected]**

2. On page 66352, column 3, § 1.752-2(e)(1), two lines above the heading "*(2) Computation of present value.*", the language "accrue is less than 25% of the total" is corrected to read "accrue is less than 25 percent of the total".

3. On page 66354, column 3, § 1.752-2(g)(4), in the example, two lines above the heading "*(h) Partner providing property as security for partnership liability—(1) Direct pledge.*", the language "$28,795 and A bears to economic risk of loss" is corrected to read "$28,795 and A bears the economic risk of loss".

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-3229 Filed 2-11-92; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 751

### Personnel Claims Regulations

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth amended regulations pertaining to the Department

of the Navy's personnel claims program. This rule reflects changes to JAG Instruction 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States. This rule simplifies the Department of the Navy processing of personnel claims.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Captain Milton D. Finch, JAGC, USN, Deputy Assistant Judge Advocate General (Claims and Tort Litigation), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400, (703) 325-9880.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 133, 939, 5013, and 5148; E.O. 11476; and 32 CFR parts 700.206 and 700.1202; the Judge Advocate General revises 32 CFR part 751. This revision reflects changes to JAG Instruction 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States. This part has been revised and shortened. It sets forth the responsibilities and procedures for the supervision and management of the Navy's personnel claims program and the investigation of claims under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243). It also sets forth the procedures and responsibilities for the administrative processing and consideration of personnel claims against the United States.

This revision was adopted on January 17, 1991. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal Naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of 32 CFR parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in Executive Order 12291, and does not have substantial impact on the public.

**List of Subjects in 32 CFR Part 751**

Claims.

For the reasons set out in the preamble, Title 32, Part 751 of the Code of Federal Regulations is revised to read as follows:

## PART 751—PERSONNEL CLAIMS REGULATIONS

**Subpart A—Claims Against the United States**

Sec.
751.1 Scope of Subpart A.
751.2 Claims against the United States: In general.
751.3 Authority.
751.4 Construction.
751.5 Definitions.
751.6 Claims payable.
751.7 Claims not payable.
751.8 Adjudicating authorities.
751.9 Presentment of claim.
751.10 Form of claim.
751.11 Investigation of claim.
751.12 Computation of award.
751.13 Payments and collections.
751.14 Partial payments.
751.15 Reconsideration and appeal.
751.16-751.20 [Reserved]

**Subpart B—Demand on Carrier, Contractor, or Insurer**

751.21 Scope of Subpart B.
751.22 Carrier recovery: In general.
751.23 Responsibilities.
751.24 Notice of loss or damage.
751.25 Types of shipments and liability involved.
751.26 Demand on carrier, contractor, or insurer.
751.27 Preparation and dispatch of demand packets.
751.28 Assignment of claimants rights to the government.
751.29 Recoveries from carrier, contractor, or insurer.
751.30 Settlement procedures and third party responses.
751.31 Common reasons for denial by carrier or contractor.
751.32 Forwarding claims files for offset action.
751.33 Unearned freight packet.
751.34 GAO appeals.

**Authority:** 5 U.S.C 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476, 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

## Subpart A—Claims Against the United States

### § 751.1 Scope of subpart A.

Subpart A of this part prescribes procedures and substantive bases for administrative settlement of claims against the United States submitted by Department of the Navy (DON) personnel and civilian employees of the naval establishment.

### § 751.2 Claims against the United States: In general.

(a) *Maximum amount payable.* The Military and Civilian Employees' Personnel Claims Act (Personnel Claims Act), 31 U.S.C. 3701, 3702, and 3721, provides that the maximum amount payable for any loss or damage arising from a single incident is limited to $40,000.00. Claims for losses occurring prior to 31 October 1988 are limited to $25,000.00.

(b) *Additional instructions.* The Judge Advocate General of the Navy may issue additional instructions or guidance as necessary to give full force and effect to this section.

(c) *Preemption.* The provisions of this section and the Personnel Claims Act are preemptive of other claims regulations. Claims not allowable under the Personnel Claims Act may, however, be allowable under another claims act.

(d) *Other claims.* Claims arising from the operation of a ship's store, laundry, dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

### § 751.3 Authority.

The Personnel Claims Act provides the authority for maximum payment up to $40,000.00 for loss, damage, or destruction of personal property of military personnel or civilian employees incident to their service. The Act provides for the recovery from carriers, warehouse firms, and other third parties responsible for such loss, damage, or destruction. No claim may be paid unless it is presented in writing within 2 years of the incident giving rise to the claim.

### § 751.4 Construction.

The provisions of this section and the Personnel Claims Act provide limited compensation to service members and civilian employees of the DON for loss and damage to personal property incurred incident to service. This limited compensation is not a substitute for private insurance. Although not every loss may be compensated under the Personnel Claims Act, its provisions shall be broadly construed to provide reasonable compensation on meritorious claims. Adjudications must be based on common sense and the reasoned judgment of the claims examiner giving the benefit of realistic doubt to the claimant.

### § 751.5 Definitions.

(a) *Proper claimants*—(1) *Members of the DON.* All Navy and Marine Corps active duty members and reservists on active duty for training under Federal law whether commissioned, enrolled, appointed, or enlisted. A retired member may only claim under this Act if loss or damage occurred while the claimant was on active duty or in connection with the claimant's last movement of personal property incident to service.

(2) *Civilian employees of the Navy.* Federal employees of the naval establishment paid from appropriated

funds. This term does not include Red Cross employees, USO personnel, and employees of Government contractors (including technical representatives).

(3) *Claims by nonappropriated-fund employees.* Claims by employees of Navy and Marine Corps nonappropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this enclosure and forwarded to the appropriate local nonappropriated-fund activity which employs the claimant for payment from nonappropriated-funds.

(4) *Separation from service.* Separation from the service or termination of employment shall not bar former military personnel or civilian employees from filing claims or bar designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provision of these regulations when such claim accrued prior to separation or termination.

(b) *Improper claimants.* Insurers, assignees, subrogees, vendors, lienholders, contractors, subcontractors and their employees, and other persons not specifically mentioned as proper claimants.

(c) *Unusual occurrence.* Serious events and natural disasters not expected to take place in the normal course of events. Two different types of incidents may be considered unusual occurrences: those of an unusual nature and those of a common nature that occur to an unexpected degree of severity. Examples of unusual occurrences include structural defects in quarters, faulty plumbing maintenance, termite or rodent damage, unusually large size hail, and hazardous health conditions due to Government use of toxic chemicals. Examples of occurrences that are not unusual include potholes or foreign objects in the road, ice and snow sliding off a roof onto a vehicle, and tears, rips, snags, or stains on clothing. Claims that electrical or electronic devices were damaged by a power surge may be paid when lightning has actually struck the claimant's residence or objects outside the residence, such as a transformer box, or when power company records or similar evidence shows that a particular residence or group of residences was subjected to a power surge of unusual intensity. In areas subject to frequent thunderstorms or power fluctuations, claimants are expected to use surge suppressors, if available, to protect delicate items such as computers or videocassette recorders.

(d) *Personal property.* Property including but not limited to household goods, unaccompanied baggage, privately owned vehicles (POV's), mobile homes, and boats.

(e) *Intangible property.* Property that has no intrinsic marketable value such as bankbooks, checks, promissory notes, non-negotiable stock certificates, bonds, baggage checks, insurance policies, money orders, and travelers checks.

(f) *Vehicles.* Includes automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks, mounted camper bodies, motor homes, boats, boat trailers, bicycles, and aircraft. Mobile homes and other property used as dwelling places are not considered vehicles.

**§ 751.6 Claims payable.**

Claims for loss, damage, or destruction of property may be considered as set out below if possession of the property was reasonable and useful under the circumstances and the loss did not result from the negligence of the claimant.

(a) *Transportation and storage losses.* (1) Incurred during transportation under orders, whether in possession of the Government, carrier, storage warehouse, or other Government contractor.

(2) Incurred during travel under orders, including temporary duty.

(3) Incurred during travel on a space available basis on a military aircraft, vessel, or vehicle.

(4) *Do-it-yourself (DITY) moves.* In certain circumstances, loss of or damage to property during a DITY move is compensable. Claimants, however, are required to substantiate the fact of loss or damage in shipment. Claimants who do not prepare inventories have difficulty substantiating thefts. In addition, unless evidence shows that something outside the claimant's control caused the damage, breakage is presumed to be the result of improper packing by the claimant. For example, if a claimant's truck is rear-ended by a drunk driver during a DITY move, it is out of claimant's control. If the claimant can substantiate that he was free from negligence, he can file a claim for damages to his household goods.

(5) *Shipment or storage at the claimant's expense.* The shipment or storage is considered Government-sponsored if the Government later reimburses the claimant for it. The Government, however, will not compensate a claimant for loss or damage that occurs while property is being shipped or stored at the claimant's expense, even if the Government reimburses the claimant for the shipment or storage fees. The reason for this is that there is no contract, called a Government Bill of Lading (GBL), between Government and the carrier. In such cases the claimant must claim against the carrier.

(b) *Losses at assigned quarters or other authorized places.* Damage or loss caused by fire, explosion, theft, vandalism, lightning, flood, earthquake, and unusual occurrences. Losses due to theft may only be paid if the claimant took reasonable measures to safeguard the property and the theft occurred as a result of a forced entry. Claimants are expected to secure windows and doors of their barracks, quarters, wall lockers, and other storage areas. Claimants are expected to store valuables in a secure area within their barracks, quarters, and storage areas. Claimants are also expected to take extra measures to protect cash, valuable jewelry, and similar small, easily pilferable items. Normally, such items should be kept in a locked container within a secured room. It is also advisable that the locked container be large enough that it is not convenient for a thief to carry off. Bicycles located at quarters or on base must be secured to a fixed object. Overseas housing is considered assigned quarters for claimants who are not local inhabitants.

(c) *Vehicle losses.* (1) Incurred while a vehicle is used in the performance of military duty, if such use was authorized or directed for the convenience of the Government, provided the travel did not include commuting to or from the permanent place of duty, and did not arise from mechanical or structural defect of the vehicle. There is no requirement that the loss be due to fire, flood, hurricane, or other unusual occurrence, or to theft or vandalism. As a general rule, however, travel is not considered to be for the convenience of the Government unless it was pursuant to written orders authorizing use for which the claimant is entitled to reimbursement. The claimant must be free from negligence in order to be paid for a collision loss. Travel by the claimant to other buildings on the installation is not considered to be under orders for the convenience of the Government. Travel off the installation without written orders may only be deemed to be for the convenience of the Government if the claimant was expressly directed by his superior to use POV to accomplish the mission. The issuance of written orders after the fact raises the presumption that travel was not for the convenience of the Government. The maximum payment of $2,000.00 authorized by the Allowance

List-Depreciation Guide still applies to loss of or damage to vehicles and contents. This maximum does not apply to DITY moves.

(2) Incurred while a vehicle is shipped at Government expense, provided the loss or damage did not arise from mechanical or structural defect of the vehicle during such shipment. Damage caused during shipment at the claimant's expense or while the vehicle is being moved to or from the port by an agent of the claimant is not compensable.

(3) Incurred while a vehicle is located at quarters or other authorized place of lodging, including garages, carports, driveways, assigned parking spaces, if the loss or damage is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. Vandalism is damage intentionally caused. Stray marks caused by children playing, falling branches, gravel thrown by other vehicles, or similar occurrences are not vandalism. The amount payable on vandalism claims is limited to $2,000.00.

(4) Incurred while a vehicle is located at places other than quarters but on a military installation, if the loss or damage is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. "Military installation" is used broadly to describe any fixed land area, wherever situated, controlled, and used by military activities or the Department of Defense (DOD). A vehicle properly on the installation should be presumed to be used incident to the claimant's service. A vehicle that is not properly insured or registered in accordance with local regulations is not properly on the installation. A vehicle left in a remote area of the installation that is not a designated long-term parking area for an undue length of time is presumed not to be on the installation incident to service.

(5) *Theft of property stored inside a vehicle.* Claimants are expected to lock doors and windows. Neither the passenger compartment nor the trunk of a vehicle is a proper place for the long-term storage of property unconnected with the use of the vehicle. The passenger compartment of a vehicle does not provide adequate security, except for very short periods of time for articles that are not of high value or easily pilferable. Car covers and bras are payable if bolted or secured to the vehicle with a wire locking device.

(6) *Rental vehicles.* Damage to rental vehicles is considered under paragraphs of the Joint Federal Travel Regulations (JFTR), rather than as a loss incident to service.

(d) *Mobile homes and contents in shipment.* Claims for damage to mobile homes and contents in shipment are payable unless the damage was caused by structural or mechanical defects (see § 751.12(g) below on mobile homes).

(e) *Borrowed property (including vehicles).* Loss or damage to borrowed property is compensable if it was borrowed for claimant's or dependent's own use. A statement will be provided by the owner of the property attesting to the use of the property by the claimant.

(f) *Clothing and articles being worn.* Repairs/replacement of clothing and articles being worn while on a military installation or in the performance of official duty may be paid if loss is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. This paragraph shall be broadly construed in favor of compensation, but see § 751.5(c) for the definition of unusual occurrence. Articles being worn include hearing aids, eyeglasses, and items the claimant is carrying, such as a briefcase.

(g) *Personal property held as evidence or confiscated property.* If property belonging to the victim of a crime is to be held as evidence for an extended period of time (in excess of 2 months) and the temporary loss of the property will work a grave hardship on the claimant, a claim for the loss may be considered for payment. This provision will not be used unless every effort has been made to determine whether secondary evidence, such as photographs, may be substituted for the item. No compensation is allowed to a person suspected of an offense for property seized from that same person in the investigation of that offense. This also applies to property a foreign government unjustly confiscates or an unjust change in a foreign law that forces surrender or abandonment of property.

(h) *Theft from possession of claimant.* Theft from the person of the claimant is reimbursable if the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreation facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

(i) *Property used for the benefit of the Government.* Compensation is authorized where property is damaged or lost while being used in the performance of Government business at the direction or request of superior authority or by reason of military necessity.

(j) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Compensation is authorized for personal funds delivered to and accepted by military and civilian personnel authorized by the commanding officer to receive these funds for safekeeping, deposit, transmittal, or other authorized disposition, if the funds were neither applied as directed by the owner nor returned to the owner.

(k) *Fees*—(1) *For obtaining certain documents.* The fees for replacing birth certificates, marriage certificates, college diplomas, passports, or similar documents may be allowed if the original or a certified copy is lost or destroyed incident to service. In general, compensation will only be allowed for replacing documents with a raised seal that are official in nature. No compensation will be allowed for documents that are representative of value, such as stock certificates, or for personal letters or records.

(2) *Estimate fees.* An estimate fee is a fixed cost charged by a person in the business of repairing property to provide an estimate of what it would cost to repair property. An estimate fee in excess of $50.00 should be examined with great care to determine whether it is reasonable. A person becomes obligated to pay an estimate fee when the estimate is prepared. An estimate fee should not be confused with an appraisal fee, which is not compensable (see § 751.7). A reasonable estimate fee is compensable if it is not going to be credited toward the cost of repair. If it is to be credited toward the cost of repair, it is not compensable regardless of whether the claimant chooses to have the work done. When an estimate fee is claimed, the file must reflect whether the fee is to be credited.

**§ 751.7 Claims not payable.**

(a) *Losses in unassigned quarters in the United States.* Claims for property damaged or lost at quarters occupied by the claimant within the United States that are not assigned or otherwise provided by the Government.

(b) *Currency or jewelry shipped or stored in baggage.* Claims for lost money, currency, or jewelry shipped or stored in baggage are not payable. Coin or paper money included in collections is payable only if listed on an inventory prepared at origin.

(c) *Enemy property or war trophies.* This includes only property that was originally enemy property or a war

trophy that passed into the hands of a collector and was then purchased by a claimant.

(d) Unserviceable or Worn-Out Property.

(e) Loss or Damage to Property to the Extent of any Available Insurance Coverage as Set Forth in § 751.26 of this part.

(f) *Inconvenience or loss of use.* Expenses arising from late delivery of personal property, including but not limited to the expenses for food, lodging, and furniture rental, loss of use, interest, carrying charges, attorney's fees, telephone calls, additional costs of transporting claimant or family members, time spent in preparation of claim, or cost of insurance are not compensable. While such claims do not lie against the Government, members should be referred to the Personal Property Office for assistance in filing their inconvenience claims against the commercial carriers (NAVSUP Publication 490, Transportation of Personal Property).

(g) *Items of speculative value.* Theses, manuscripts, unsold paintings, or a similar creative or artistic work done by the claimant, friend, or a relative is limited to the cost of materials only. The value of such items is speculative. Compensation for a utilitarian object made by the claimant, such as a quilt or bookcase, is limited to the value of an item of similar quality.

(h) *Loss or damage to property due to negligence of the claimant.* Negligence is a failure to exercise the degree of care expected under the circumstances that is the proximate cause of the loss. Losses due, in whole or in part, to the negligence of the claimant, the claimant's spouse, child, houseguest, employee, or agent are not compensable.

(i) *Business property.* Losses of items acquired for resale or use in a private business are not compensable. If property is acquired for both business and personal use, compensation will not be allowed if business use is substantial, or is the primary purpose for which the item was purchased, or if the item is designed for professional use and is not normally intended for personal use.

(j) *Motor vehicles.* Collision damage is not payable unless it meets the criteria for payment as property used for the benefit of the Government as established in § 751.6(c)(1).

(k) *Violation of law or directives.* Property acquired, possessed, or transported unlawfully or in violation of competent regulations or directives. This includes vehicles, weapons, or property shipped to accommodate another person, as well as property used to transport contraband.

(l) *Sales tax.* Sales taxes associated with repair or replacement costs will not be considered unless the claimant provides proof that the sales tax was actually paid.

(m) *Appraisal fees.* An appraisal, as distinguished from an estimate of replacement or repair, is defined as a valuation of an item provided by a person who is not in the business of selling or repairing that type of property. Normally, claimants are expected to obtain appraisals on expensive items at their own expense.

(n) *Quantities of property not reasonable or useful under the circumstances are not compensable.* Factors to be considered are claimant's living conditions, family size, social obligations, and any particular need to have more than average quantities, as well as the actual circumstances surrounding the acquisition and loss.

(o) Intangible Property, such as Bankbooks, Checks, Promissory Notes, Stock Certificates, Bonds, Bills of Lading, Warehouse Receipts, Baggage Checks, Insurance Policies, Money Orders, and Traveler's Checks are not Compensable.

(p) Property Owned by the United States, Except where the Claimant is Responsible to an Agency of the Government other than the DON.

(q) *Contractual coverage.* Losses, or any portion thereof, that have been recovered or are recoverable pursuant to contract are not compensable.

**§ 751.8 Adjudicating authorities.**

(a) *Claims by Navy personnel.* (1) The following are authorized to adjudicate and authorize payment of personnel claims up to $40,000.00:

(i) The Judge Advocate General;

(ii) Deputy Judge Advocate General;

(iii) Any Assistant Judge Advocate General;

(iv) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and

(v) Commanding officers of Naval Legal Service Offices.

(2) The Staff Judge Advocate attached to Naval Supply Center, Oakland is authorized to adjudicate and pay claims up to $25,000.00.

(3) The Staff Judge Advocate attached to Naval Station, Panama Canal is authorized to adjudicate and pay claims up to $10,000.00.

(4) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000.00:

(i) Officers in charge of Naval Legal Service Office Detachments;

(ii) The Staff Judge Advocate attached to Naval Station, Keflavik; and

(iii) Any personnel attached to a Naval Legal Service Office when specifically designated by the commanding officer of that Naval Legal Service Office.

(5) Any individual, when personally designated by the Judge Advocate General, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount, not to exceed $40,000.00.

(b) *Claims by Marine Corps personnel.* (1) The following individuals are authorized to adjudicate and authorize payment of personnel claims up to $40,000.00:

(i) Commandant of the Marine Corps;

(ii) Deputy Chief of Staff, Manpower and Reserve Affairs Department;

(iii) Director, Human Resources Division;

(iv) Head, Personal Affairs Branch;

(v) Deputy Head, Personal Affairs Branch;

(vi) Head, Personnel Claims Section; and

(vii) Any individual, when personally designated by the Commandant of the Marine Corps, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount, and not to exceed $40,000.00.

(2) The following individuals are authorized to adjudicate and authorize payment of personnel claims up to $25,000.00:

(i) Head, Adjudication Unit;

(ii) Head, Carrier Recovery Unit; and

(iii) Head, Administration Unit.

**§ 751.9 Presentment of claim.**

(a) *General.* A claim shall be submitted in writing and, if practicable, be presented to the claims office or personal property office serving the installation where the claimant is stationed, or nearest to the point where the loss or damage occurred. If submission in accordance with the foregoing is impractical under the circumstances, the claim may be submitted in writing to any installation or establishment of the Armed Forces which will forward the claim to the appropriate Navy or Marine Corps claims office for processing. To constitute a filing under this regulation, a claim must be presented in writing to one of the military departments. Claims that are incomplete will not be refused and shall be logged in as received. Claimants submitting such claims, however, shall be informed in writing that properly completed forms or necessary substantiation must be received within a fixed period of time (normally 30 days), otherwise the claim

will be denied or paid only in the amount substantiated.

(b) *Statute of limitations.* A claim must be presented in writing to a military installation within 2 years after it accrues. This requirement is statutory and may only be waived if a claim accrues during armed conflict, or armed conflict intervenes before the 2 years have run, and good cause is shown. In this situation, a claim may be presented not later than 2 years after the end of the armed conflict. A claim accrues on the day the claimant knows or should know of the loss. For losses that occur in shipment of personal property, normally the day of delivery or the day the claimant loses entitlement to storage at Government expense (whichever occurs first) is the day the claim accrues. If a claimant's entitlement to Government storage terminates, but the property is later delivered at Government expense, the claim accrues on delivery. In computing the 2 years, exclude the first day (day of delivery or incident) and include the last day. If the last day falls on a non-workday, extend the 2 years to the next workday.

(c) *Substantiation.* The claimant is responsible for substantiating ownership or possession, the fact of loss or damage, and the value of property. Claimants are expected to report losses promptly. The greater the delay in reporting a loss, the more substantiation the claimant is expected to provide.

(1) *Obviously damaged or missing inventory items that are not reported at delivery.* Claimants are expected to list missing inventory items and obvious damage at time of delivery. Claimants who do not should be questioned. Obviously some claimants will simply not notice readily apparent damage. If, however, the claimant cannot provide an explanation or lacks credibility, payment should be denied based on lack of evidence that the item was lost or damaged in shipment.

(2) *Later-discovered shipment loss or damage.* A claimant has 70 days to unpack, discover, and report loss and damage that is not obvious at delivery. In most cases, loss and damage that is discovered later and reported in a timely manner should be deemed to have been incurred in shipment.

(3) *Damage to POV's in shipment.* Persons shipping POV's are expected to list damage on DD Form 788 (Private Vehicle Shipping Document for Automobile) when they pick up the vehicle. Obvious external damage that is not listed is not payable. Damage the claimant could reasonably be expected not to notice at the pickup point should be considered if the claimant reports the damage to claims personnel within a short time, normally a few days, after arriving at the installation.

(4) *Credibility.* Most claimants are honest. Most claimants objectively attempt to claim only what is due them. These persons are entitled to the presumption that what they list is honest, although it may not be correct. Some claimants lack credibility and their claims require careful scrutiny. Factors that indicate a claimant's credibility is questionable include amounts claimed that are exaggerated in comparison with the cost of similar items, insignificant or almost undetectable damage, very recent purchase dates for most items claimed, and statements that appear incredible. Such claimants should be required to provide more evidence than is normally expected.

(5) *Inspections.* Whenever a question arises about damage to property, the best way to determine a proper award is to examine the item closely to determine that nature of the damage. For furniture, undersurfaces and the edges of drawers and doors should be examined to determine whether the material is solid hardwood, fine quality veneer over hardwood, veneer over pressed wood, or other types of material. If the inspection is conducted at the claimant's quarters, the general quality of property should be determined. Claimants should routinely be directed to bring in vehicles and small broken items of value such as figurines for inspection, and inspections should be conducted on all large claims. Observations by repairmen and transportation inspectors are very valuable, but on occasion, claims personnel must go out of the office and inspect items themselves. Such inspections are necessary to reduce the number of reconsiderations and fraudulent claims and are invaluable in enabling claims personnel to understand the facts in many situations.

**§ 751.10 Form of claim.**

The claim should be submitted on DD Form 1842 (Claim for Personal Property) accompanied by DD Form 1844 (List of Property). If DD Forms 1842 and 1844 [1] are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. The claim must be signed by a proper claimant (see § 751.5) or by a person with a power of attorney for a proper claimant. A copy of the power of attorney must be included with the claim.

[1] Copies of these forms may be obtained by contacting the claims office or personal property office serving the installation where the claimant is stationed, or nearest to the point where the loss or damage occurred.

**§ 751.11 Investigation of claim.**

Upon receipt of a claim filed under the Personnel Claims Act, the claim shall be stamped with the date and receiving office, and be referred to a claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate.

**§ 751.12 Computation of award.**

The Judge Advocate General will periodically publish an Allowance List-Depreciation Guide specifying rates of depreciation and maximum payments applicable to categories of property. The Allowance List-Depreciation Guide will be binding on all DON claims personnel. The value of the loss is determined and adjusted to reflect payments, repairs, or replacement by carriers or insurers, or lost potential insurance or carrier recoveries.

(a) *Repair of items.* For items that can be economically repaired, the cost of repair or an appropriate loss in value is the measure of the loss. The cost of repair may be the actual cost, as demonstrated by a paid bill, or reasonable estimated costs, as demonstrated by an estimate of repair prepared by a person in the business of repairing that type of property.

(1) *Loss of value (LOV)*—(i) *Minor damage not worth repairing.* An LOV, rather than replacement cost, should be awarded when an item suffers minor damage that is not economical to repair but the item remains useful for its intended purpose. An LOV is particularly appropriate when the item is not of great value and has preexisting damage (PED). An LOV is also appropriate to compensate claimants for minor damage, such as a chip or surface crack to a figure or knickknack. For example, if an inexpensive, fiberboard coffee table with extensive PED is scratched, repair of the scratch would exceed the value of the table. Under the circumstances, LOV is appropriate.

(ii) *Damage to upholstered furniture.* If damage can be repaired imperceptibly by cleaning or reweaving, the claimant is only entitled to repair cost. If repairs would be somewhat noticeable but the damage is to an area not normally seen, repair costs plus an LOV would be appropriate. Alternatively, if repairs would be somewhat noticeable but the item is of no great value and has already suffered PED, repair costs and LOV would be appropriate even if the

damage is in an obvious area. If, however, repairs would be so noticeable as to destroy the usefulness of the item, the item should be reupholstered or replaced. What is noticeable will depend on the nature and value of the item, and the nature of the damage, and claims personnel should exercise sound judgment to avoid being too lenient or too harsh.

(iii) *Cosmetic damage to nondecorative items.* LOV should also be awarded to compensate claimants for cosmetic damage to items that were not purchased for purposes of display or decoration. For example, the casing of a washing machine is dented. The washing machine is not decorative in nature and still functions perfectly. An LOV, rather than replacement of the washing machine or the casing, is the appropriate measure of the claimant's loss.

(2) *PED to repairable items.* PED is damage to an item that predates the incident giving rise to a claim. PED is most commonly identified by the use of symbols on household goods shipment inventories. Whenever PED is listed on an inventory, claims personnel must determine whether the PED did in fact exist and whether the cost of repairing the item includes repairing PED. The fact that a claimant signed the inventory that listed PED is conclusive evidence that PED did exist unless the member has taken written exceptions on the inventory to the carrier's description of PED. These findings are essential for recovery purposes. Often inspecting the item or calling the repairman who prepared the estimate is the only way to make an effective determination.

(i) *Estimates that do not include repair of PED.* If the estimate does not include repair of PED, even if PED is listed on the inventory, no deduction should be made. This fact should be recorded on the chronology sheet and on carrier recovery documents.

(ii) *Estimates that include repair of PED.* If repair of PED is included in the estimate, the percentage attributable to repair of PED is deducted.

(3) *Mechanical defects.* The Personnel Claims Act only provides compensation for losses incurred incident to service. Damage resulting from a manufacturer's defect or from normal wear and tear is not compensable. Damage to the engine or transmission of an old vehicle during shipment is probably due to a mechanical defect. Internal damage to appliances, such as old televisions, is also often due to a mechanical defect, particularly when their is no external damage to the item. Claims for internal damage to small appliances that are not normally repaired, such as toasters or hair dryers, should be assessed based on damage to other items in the carton and the shipment, the age of the item, the honesty of the claimant, and whether there are loose parts inside. If the evidence suggests rough handling caused the damage, a claim for the item should be paid. Internal damage to larger items such as televisions or stereos should be evaluated by a repairman. Evidence that suggests rough handling, such as smashed boards, provides a basis for payment. Evidence that suggests a fault in the item, such as burned-out circuits, does not. Deterioration because an item in storage was not used for a long time, rather than because the item was mishandled or the conditions of storage were improper, is also considered due to a mechanical defect.

(4) *Wrinkled clothing.* Clothing wrinkled in shipment presents special problems. Normally, unless the wrinkling is so severe as to amount to actual damage, the cost to press wrinkles out of clothing after a move is not compensable. The mere fact that clothing was "wadded up" or "used as packing material" is not in itself sufficient. The wrinkling must be such that professional pressing is necessary to make the clothing usable. This determination will depend on the wrinkling and the nature of the material.

(5) *Wet and mildewed items.* A claimant has a duty to mitigate damages by drying wet items to prevent further deterioration. Items that have been wet are not necessarily damaged and claimants who throw them away have difficulty substantiating that a loss has occurred. Although a deeply seated mildew infestation is almost impossible to remove completely, items lightly infested can often be cleaned.

(b) *Replacement of items.* A claimant is entitled to the value of missing and destroyed items. An item that has sustained damage is considered destroyed if it is no longer useful for its intended purpose and the cost of repairing it exceeds its value. Value is measured in the following ways:

(1) *Similar used items.* If there is a regular market for used items of that particular type, the loss may be measured by the cost of a similar item of similar age. Prices obtained from industry guides or estimates from dealers in this type of property are acceptable to establish value. There is a regular market on used cars and the value of a used automobile is always measured according to the N.A.D.A. Official Car Guide rather than the depreciated replacement cost. Similarly, the Mobile Home Manufactured Housing Replacement Guide may be used to value a destroyed mobile home. Where there is no regular market in a particular type of used item, however, estimates from dealers in "collector's items" should be avoided.

(2) *Depreciated replacement cost.* This is the normal measure of a claimant's loss. A catalog or store price for a new item similar in size and quality is depreciated using the Allowance List-Depreciation Guide to reflect wear and tear on the missing or destroyed item. The replacement cost for identical items—particularly decorative items—should be used whenever the item is readily available in the local area, but a claimant who is eligible to use the Navy Exchange (NEX) and the NEX Mail Order Catalog should not be allowed a higher replacement cost of an item, such as a television, from a specialty store when the NEX carries an item comparable in size, quality, and features from another manufacturer.

(3) *"Fair and reasonable" (F&R) awards.* A fair and reasonable award should be used sparingly when other measures would compensate the claimant appropriately. Overuse of such awards impedes carrier recovery and "F&R" should never be used when a more precise measure of damages is available. An F&R award for a missing or destroyed item should reflect the value of an item similar in quality, description, age, condition, and function to the greatest extent possible. An F&R award for a damaged item should reflect either the amount a firm would charge for repair or the reduced value to the greatest extent possible. Whenever such an award is made, the basis for the award should be explained on the chronology sheet, in the comments block of DD Form 1844 (List of Property), or in a separate memorandum. A fair and reasonable award may be considered in the following instances:

(i) The item is obsolete and a simple deduction of a percentage for obsolescence is not appropriate.

(ii) The claimant cannot replace the item in the local area.

(iii) The claimant cannot replace the item at any cost.

(iv) Repair costs or replacement costs are excessive for the item and an LOV is not appropriate.

(v) The claimant has substantiated a loss in some amount but has failed to substantiate a loss in the amount claimed.

(c) *Depreciation.* The Personnel Claims Act is only intended to compensate claimants for the fair market value of their loss. Except in unusual cases, a used item that has been

lost or destroyed is worth less than a new item of the same type. The price of a new replacement item must be depreciated to award the claimant the value of the lost or destroyed item. Average yearly and flat rates of depreciation have been established to determine the fair value of used property in various categories. These rates are listed in the Allowance-List Depreciation Guide. The listed depreciation rate should be adjusted if an item has been subjected to greater or lesser wear and tear than normal or if the replacement cost the claimant provides is for a used item rather than a new one. Yearly depreciation is not taken during periods of storage and normally no depreciation is taken on repair costs or on replacement cost for items less than 6 months old, excluding the month of purchase and the month the claim accrued (but see § 751.12(c)(3)).

(1) *Depreciating replacement parts.* No depreciation should be taken on replacement parts for damaged items unless these are parts separately purchased or normally replaced during the useful life of these items. The replacement cost for these latter items should be depreciated. For example, the glass top to a table is not normally replaced during the useful life of the table and should not be depreciated.

(2) *Depreciating fabric for reupholstery.* Fabric is normally replaced during the useful life of upholstered furniture. When upholstered furniture is reupholstered because the damage is too severe to be repaired and an LOV is not appropriate, the cost of new fabric is depreciated at a rate of 5 percent per year. If the item has been reupholstered since it was purchased, depreciation is measured from the date the item was last reupholstered, rather than from the date the item was originally purchased. Labor costs are allowed as claimed. If the estimate does not list separate costs for fabric and labor, the labor costs may be assumed to be 50 percent of the total bill.

(3) *Rapidly depreciating items.* Tires, most clothing items, and most toys rapidly lose their value, as the high depreciation rate for these items reflects. Depreciation should be taken on such items even when they are less than 6 months old. As a rule of thumb, half of the normal yearly or flat rate depreciation should be taken on such items when they are between 3 and 6 months old at the time of loss.

(4) *Obsolescence.* Even though depreciation is not taken during periods of storage, obsolescence should be claimed on those items that have lost value because of changes in style or technological innovations.

(5) *Military uniforms.* Normally, no depreciation should be taken on military uniforms. Depreciation, however, should be taken on military uniform items that are being phased out or that belong to persons separating from the service. Socks and underwear are not considered military uniform items.

(d) *Salvage value.* Whenever a claimant has been fully compensated for a destroyed item that still has some value, the claimant has the option of either retaining the item and having the claims office deduct an amount for the salvage value, or turning the item over to the Government or to the carrier if the carrier will fully reimburse the Government.

(1) *Turn-in to the Government.* On all claims, except CONUS domestic shipments, if the claimant does not choose to retain the items and accepts a reduction in the amount paid on the claim for salvage value, the claims office will require the claimant to turn them into a disposal unit designated by the Personal Property Office. Normally, the amount that the Government may obtain from selling such items is very low. If the claims office determines that the salvage value is less than $25.00, the claimant may be advised to dispose of the items by other means, either by throwing the item away or by turning it over to a charitable organization. Claimants may also be directed to make alternative disposition of items that have been refused by the designated disposal unit. This alternate disposition must be noted on the chronology sheet that is kept as part of the claims file. Claims personnel will not divert such items to personal use or use them to furnish Government offices. In determining whether an item has salvage value, the size of the item and the distance the claimant must travel to turn it in should be considered. A claimant must make his own arrangements to transport salvageable items prior to payment. Claims personnel should ask the claimant's command to make transportation available to assist the claimant in appropriate cases, particularly when the item is large or bulky. Sound discretion prohibits requiring a claimant living far from a designated disposal unit to turn in an item of relatively slight value.

(2) *Turn-in to the carrier.* On CONUS domestic shipments, the carrier may choose to pick up items for which it will fully reimburse the Government. Pursuant to a Joint Military-Industry Memorandum on Salvage, items that are hazardous to keep around, such as mildewed items or broken glass (except items such as figurines and crystal with a per item value of more than $50.00), may be disposed of as the claimant chooses. Claimants must retain other items for a maximum of 120 days from the date of delivery to allow the carrier to pick them up. Pursuant to this memorandum of understanding, the carrier has until the end of the inspection period or 30 days after receipt of the demand, whichever is greater, to identify such items. Claims offices must identify files in which the carrier is entitled to salvage and must process these claims for recovery action within 30 days so that the claimant does not dispose of salvageable items before the end of the period allotted for carrier pick-up.

(3) *Maximum allowances.* If the claimant will not be fully compensated for an item because a maximum allowance is applied, he will not be required to turn in the item.

(e) *Standard abbreviations.* The claims examiner's intent should be clear and unmistakable to anyone reviewing the remarks section of DD Form 1844. The following standardized abbreviations are used in completing the remarks section. Other abbreviations should not be used. Whenever one or more of these abbreviations will not adequately explain how the claimant has been compensated, a brief explanation should be inserted in the remarks section, in the comments section on the bottom of DD Form 1844, or on the chronology sheet that is kept in each claims file.

(1) *AC: Amount claimed.* The amount claimed was awarded to the claimant. This abbreviation is not used if the claimant has presented an estimate of repair.

(2) *AGC: Agreed cost of repairs.* The claimant did not present an estimate but instead, after discussing the matter with claims personnel, entered an amount that represents the claimant's guess as to how much it would cost to repair the damaged item. The claims office may accept this amount as a fair estimation of the cost of repair based on the amount of damage, the value of the item, and the cost of similar repairs in the area. A claimant may be allowed up to $50.00 as an AGC without an inspection and between $50.00 and $100.00 if claims personnel have inspected the item. The use of AGC is an integral part of small claims procedures.

(3) *CR: Carrier recovery.* The claimant was paid this amount by the carrier for the item. The payment is recorded in the remarks column, and the total carrier payment is deducted at the bottom of

DD Form 1844 in the same manner as insurance recovery.

(4) *D: Depreciation.* Yearly depreciation was taken on the destroyed or missing item in accordance with the appropriate depreciation guide in effect at the time of the loss. Deviations from standard rates must be explained.

(5) *DV: Depreciated value.* A claimant's repair costs exceeded the value of the item, so the depreciated value was awarded instead. Whenever a claimant claims a repair cost that is very high, relative to the age and probable replacement cost, the replacement cost should be obtained and the depreciated value determined.

(6) *ER: Estimate of repair.* The claimant provided an estimate of repair that was used to value the loss. If multiple estimates were provided, they should be numbered and referred to as exhibits.

(7) *EX: Exhibit.* When numerous documents have been provided to substantiate a claim, they should be numbered and referred to as exhibits.

(8) *FR: Flat rate depreciation.* Flat rate depreciation was taken on an item in accordance with the Depreciation Guide in effect at the time of the loss. Deviations from the normal rate must be explained.

(9) *F&R: Fair and reasonable.* A fair and reasonable award was made (see § 751.12(b)(3)).

(10) *LOV: Loss of value.* An LOV was awarded (see § 751.5(a)(1)).

(11) *MA: Maximum allowance.* The adjudicated value, listed in the "Amount Allowed" column, exceeds a maximum allowance. The amount in excess of the maximum allowance is subtracted at the bottom of the DD Form 1844.

(12) *N/P: Not payable.* The item is not payable. The reason for this comment should be noted (i.e., "not substantiated").

(13) *OBS: Obsolescence.* A percentage was deducted for obsolescence.

(14) *PCR: Lost potential carrier recovery.* A deduction was made for lost PCR.

(15) *PED: Preexisting damage.* A deduction was made for PED.

(16) *PP: Purchase price.* The purchase price was used to value the loss. Normally, the purchase price is not an adequate measure of the claimant's loss. If, however, the claimant used the replacement cost of a dissimilar item or otherwise failed to substantiate the replacement cost, a recent purchase price may be used at the discretion of claims personnel, if a true replacement cost is not available.

(17) *NEX: Navy Exchange replacement cost.* A replacement from the NEX was used.

(18) *RC: Replacement cost.* A replacement cost was used. The store or catalog from which the replacement cost was taken should be listed.

(19) *SV/N: Item has no salvage value.* A destroyed item was determined to have no salvage value.

(20) *SV/R: Salvage value, item retained.* A destroyed item was determined to have salvage value and the claimant chose to keep the item. Accordingly, a deduction was made for the salvage value.

(21) *SV/T: Salvage value, item turned in.* A destroyed item was determined to have salvage value and the claimant chose not to keep the item. If the item is part of a CONUS domestic shipment, the claimant must keep it for the carrier to pick up. Otherwise, the claimant must turn the item in prior to payment on the claim.

(f) *Sets.* Normally, when component parts of a set are missing or destroyed, the claimant is only entitled to the replacement cost of the missing or destroyed components. In some instances, however, a claimant would be entitled to replacement of the entire set or to an additional LOV. Some claimants will assert that all of the items in a room are part of a set. Pieces sold separately, however, are ordinarily not considered parts of a set, and pieces that merely complement other items, such as a loveseat purchased to complement a particular hutch, are never considered part of a set. When a component part of a set is missing or destroyed and cannot be replaced with a matching item, or has to be repaired so that it no longer matches other component parts of the set, the following rules apply:

(1) *The set is no longer useful for its intended purpose.* When a set is no longer useful for its intended purpose because component parts are missing or destroyed the entire set may be replaced. Note that several firms will match discontinued sets of china and crystal and that replacement of the set is not authorized if replacement items can be thus obtained. Generally, with china and crystal the value of the set as a whole is not destroyed unless more than 25 percent of the place settings are unusable. Exceptions may be made if the claimant can demonstrate a particular need for a certain number of place settings because of family size or social obligations. In those rare instances when an entire set is replaced, the claimant will be required to turn in undamaged pieces.

(2) *The set is still useful for its intended purpose.* When missing pieces cannot be matched and there is measurable decrease in the value of the set, but the set is still useful for its intended purpose, the claimant is awarded the value of the missing pieces plus an amount for the diminution in value of the set as a whole. The amount awarded as an LOV will vary depending on the exact circumstances.

(3) *Mattresses and upholstered furniture are recovered.* A mattress and box spring set is covered during normal use. Such sets are still useful for their intended purpose if one piece of the set has to be recovered in a different fabric. No award will be made for the undamaged piece. When one piece of a set of upholstered furniture suffers damage that cannot be repaired or recovered in matching fabric, recovering the entire set or recovering the damaged piece plus LOV should be considered. Factors to take into account include the value of the set, PED to the set, the nature of the current damage, and the extent to which the claimant's furniture is already mismatched.

(g) *Mobile homes.* Mobile homes present special problems. Most mobile homes, particularly larger ones, are not built to withstand the stress of multiple long moves. While the Mobile Home One-Time Only rate solicitation program, effective 1 November 1987, may have reduced the incidence of loss and damage by encouraging carriers to use extra axles when necessary, mobile home shipments can result in enormous uncompensated losses for servicemembers and present unusual difficulties for claims adjudicators. Because the risk is so great, claims offices must coordinate with their servicing transportation offices to ensure both that servicemembers shipping mobile homes are advised of the risk and of their responsibilities, and that the transportation office does not authorize shipment of a mobile home that has not been placed in a fit condition to be shipped.

(1) *Transportation counseling prior to shipment.* Servicemembers should be advised of the following:

(i) They are responsible for placing the mobile home and its tires, tubes, frames, and other parts in fit condition to ship and for loading the mobile home to withstand the stresses of normal transportation. They will not be compensated for any damage that results either from a latent defect in the construction of the mobile home (except when the carrier is aware of the defect and the servicemember is not) or from their failure to place the mobile home in fit condition to ship.

(ii) They are responsible for paying for necessary repairs en route. Such repairs can amount to several hundred or even

several thousand dollars, and some mobile homes have been left in storage at the servicemember's expense hundreds of miles from destination because the owner could not pay for necessary repairs.

(iii) They are responsible for resealing the roof and weatherproofing the mobile home after delivery. The cost of this is not compensable, nor is any damage caused by the servicemember's failure to have it done.

(iv) They are responsible for removing obstructions, grading the roadway, or otherwise preparing the site to make it accessible for the carrier's equipment at both origin and destination.

(v) Because of the risk that damage will result for which they cannot be compensated, servicemembers should strongly consider purchasing private insurance coverage. A claimant usually must purchase separate insurance for property shipped inside the mobile home and most mobile home carriers will sell some sort of insurance coverage for damage to the mobile home itself. Often, when a mobile home has been moved repeatedly, the risk of uncompensated loss is so high that the servicemember should consider selling the home rather than attempting to ship it.

(2) *Inspection Prior to Shipment.* Transportation personnel should inspect the home prior to shipment in all instances. All defects should be recorded. In particular:

(i) A mobile home should not be shipped with a servicemember's furniture and other household goods inside. The maximum safe weight of appliances and additional property is very low. An overweight mobile home tends to blow tires and break apart during shipment. Servicemembers should be advised long before shipment that they will have to make other arrangements for shipping such items at their own expense.

(ii) A mobile home should never be shipped with defects in the steel frame or tow hitch.

(iii) The condition of all tires should be checked and recorded. Some carriers submit huge bills for "blown" tires during shipment.

(iv) Structural changes to the interior of the home, particularly those that involve cutting through beams, should be examined closely and a civil engineer should be called in to render an opinion. Frequently, it is not safe to ship mobile homes in which the claimant has altered the interior framing.

(3) *Latent Defects.* Many carriers will attempt to escape liability by attributing all damage to latent manufacturing defects. A loss due to such a defect, like a loss due to any other mechanical defect, is not considered incident to service. When an engineer's report or other evidence shows that damage was indeed caused by a defect rather than by the carrier's failure to take the necessary care, the following rules apply:

(i) If both the carrier and the claimant knew or should have known of the defect, and if the claimant took no corrective action and had the mobile home shipped anyway, the claim is not payable.

(ii) If the carrier knew or should have known of the defect, and the claimant could not reasonably have been expected to know of it, the claim is payable and liability should be pursued against the carrier.

(iii) If neither the claimant nor the carrier could reasonably be expected to know of the defect, the claim is not payable.

(4) *Substantiation of a claim.* Prior to adjudication of such claims, the mobile home should be inspected and the following evidence obtained, if possible:

(i) *DD Form 1800 (Mobile Home Shipment Inspection at Destination).* This document shows the condition of the home at origin prior to shipment. This document is prepared by the Transportation Office (TO) and is signed by the servicemember, the carrier's representative, and the Government inspector. It is vital and a claim should not be paid without it. At destination, damages noted at delivery should be annotated and the form dated and signed by the driver and the servicemember. Damages may be listed on this form or on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery).

(ii) *DD Form 1863 (Accessorial Services-Mobile Home).* For shipments after 1 November 1987, DD Form 1863 lists all services the carrier is required to provide, including line-haul, payment of tolls, overdimension charges, permits and licenses, provision of anti-sway devices, axles with wheels and tires, temporary lights, and escort services. All costs and services may not appear on the GBL. For shipments prior to 1 November 1987, damages may also be listed on this form.

(iii) *DD Form 1840/1840R.* Beginning 1 November 1987, later-discovered damages must be listed on DD Form 1840R and dispatched to the carrier within 75 days of delivery. Timely notice on mobile home shipments differs slightly from such notice on other shipments. Item 306 of the carrier's rate solicitation provides that "upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late discovered loss or damage, including personal property within the mobile home, will be noted on the DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt."

(iv) *DD Form 1412 (Inventory of Items Shipped in Housetrailer).* Prior to 1 November 1987, the servicemember prepared DD Form 1412. After 1 November 1987, the carrier is required to prepare this in coordination with the servicemember.

(v) *DD Form 1841.* If a Government representative does not inspect the mobile home at delivery, an inspection should be requested.

(vi) *Driver's statement.* The mobile home carrier should be requested to provide (within 14 days) a statement from the driver of the towing vehicle explaining the circumstances surrounding the damage as well as detailed travel particulars. If the mobile home carrier does not respond, the file should be so annotated. Such statements are often self-serving and should be reviewed critically to determine whether the carrier is attributing damage to a latent defect.

(vii) *Owner's statement.* The claimant should provide a statement concerning the age of the mobile home, the date and place purchased, any prior damage or repairs, all prior moves, and prior claims.

(viii) *Estimates of repair.* When possible, the claimant should obtain two estimates of repair from firms in the business of repairing, rather than selling, mobile homes. Such estimates should list the approximate value of the home before and after damage, a detailed breakdown of the repairs needed and their cost, and the cause of damage.

(ix) *Engineer's statement.* Where the facts indicate the possibility of a latent defect, the claimant should be assisted in obtaining a statement from a qualified engineer or vehicle maintenance professional with expertise in mobile homes explaining the cause of damage. The claims office should coordinate in advance with facilities engineers or with local reserve units with engineering expertise to provide such inspection where possible.

(5) *Compensable damage.* In adjudicating the claim, the claimant may be paid for loss of or damage to the mobile home except when the damage is due to a latent defect, to the servicemember's failure to place the home in fit condition to ship, or to the servicemember's failure to have the roof

resealed. The servicemember may also be compensated for the reasonable cost of repair estimates provided by firms in the business of mobile home repair and of opinions prepared by qualified engineers. The claimant may not be compensated for services the carrier failed to perform or performed improperly or for other incidental expenses. The claimant should be referred to the transportation office for these. Such services (listed on DD Form 1843 and the GBL correction notice) include:

(i) Escort or pilot services, ferry fees, tolls, permits, overdimension charges, or taxes.

(ii) Storage costs or parking fees en route.

(iii) Expand charges and charges for anti-sway devices, brakes and brake repairs, or adding or replacing axles, tubes, or tires.

(iv) Wrecker service.

(v) Connecting or disconnecting utilities.

(vi) Blocking, unblocking, or removing or installing skirting.

(vii) The cost of separating or reassembling and resealing a double-wide mobile home.

(6) *Carrier liability and attempted waivers.* In the absence of additional coverage, the carrier's maximum liability for personal property shipped with the mobile home is $250.00. The carrier is fully liable for damages to the mobile home itself. Carriers are also liable for damage caused by third parties with whom they contract, such as wrecker services. Some carriers may still try to obtain waivers from the servicemember. A waiver signed by the servicemember, however, is not binding on the United States. The Navy is the contracting party and the owner has no authority to sign a waiver agreement or any other document purporting to exempt the carrier from the liability imposed under the GBL.

**§ 751.13 Payments and collections.**

Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2 or in superseding messages, if applicable.

**§ 751.14 Partial payments.**

(a) *Partial payments when hardship exists.* When claimants need funds to feed, clothe, or house themselves and/or their families as a result of sustaining a compensable loss, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment is made, a copy of the payment voucher and all other information related to the partial payment shall be placed in the claim file. Action shall be taken to ensure the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(b) *Marine hardship payments.* The Marine claimant's Transportation Management Office (TMO) shall ensure compliance with all requirements of § 751.14(a), and may request authority for payment by message from the Commandant of the Marine Corps (MHP-40).

(c) *Effect of partial payment.* Partial payments are to be subtracted from the adjudicated value of the claim before payment of the balance due. Overpayments are to be promptly recouped.

**§ 751.15 Reconsideration and appeal.**

(a) *General.* When a claim is denied either in whole or in part, the claimant shall be given written notification of the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within 6 months from the date the claimant receives notice of the initial adjudication of the claim. If a claimant requests reconsideration and if it is determined that the original action was erroneous or incorrect, it shall be modified and, when appropriate, a supplemental payment shall be approved. If full additional payment is not granted, the file shall be forwarded for reconsideration to the next higher adjudicating authority. The next higher adjudicating authority may be the commanding officer of the Naval Legal Service Office if a properly delegated subordinate has acted initially on the claim. For claims originally adjudicated by the commanding officer, the files will be forwarded to the Judge Advocate General for final action. The claimant shall be notified of this action either by letter or by copy of the letter forwarding the file to higher adjudicating authority. The forwarding letter shall include a synopsis of action taken on the file and reasons for the action or denial, as well as a recommendation of further action or denial.

(b) *Files forwarded to JAG.* For files forwarded to JAG in accordance with § 751.15(a), the forwarding endorsement shall include the specific reasons why the requested relief was not granted and shall address the specific points or complaints raised by the claimant's request for reconsideration.

(c) *Appeals procedure for claims submitted by Marine Corps personnel.* Where any of the Marine Corps adjudicating authorities listed in § 751.8(b) fail to grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded together with the entire original file and the adjudicating authority's recommendation, to the Judge Advocate General.

**§§ 751.16-751.20 [Reserved]**

## Subpart B—Demand On Carrier, Contractor, or Insurer

**§ 751.21 Scope of subpart B.**

Subpart B addresses the recovery process for loss or damage occurring during the storage or transport of household goods and other personal property for which military personnel and civilian employees were paid under the provisions of 31 U.S.C. 3721. The authority for pursuing recovery action is found at 31 U.S.C. 3711.

**§ 751.22 Carrier recovery: In general.**

(a) *Responsibility.* Recovery of amounts due for personal property lost or damaged while in transit or in storage at Government expense is a joint Personal Property Office/Naval Legal Service Office responsibility. In order to establish liability and to effectively pursue a recovery claim against a carrier, warehouseman, or other third party, it is essential that all required action be accomplished in an expeditious manner. Failure of the property owner or any Government agent to exercise diligence in the performance of duties may render collection of the claim impossible and thereby deprive the Government of rightful revenue. Claims approving and settlement authorities will ensure that all actions required of the property owner and naval personnel are accomplished promptly.

(b) *Elements of collection.* There are four elements in the successful assertion and collection of a recovery claim. They are:

(1) Proving that a transit loss occurred;

(2) Determining who had responsibility for the goods at the time of the transit loss;

(3) Calculating the amount of damages; and

(4) Pursuing the responsible party or parties vigorously.

**§ 751.23 Responsibilities.**

(a) *Notice of loss.* Claims office personnel must ensure that Notice of Loss or Damage, DD Form 1840R, is properly completed and dispatched to the liable third party or parties within 75 days of delivery of the property.

(b) *Counseling of claimant.* Claims office personnel should coordinate with the local personal property office to ensure proper counseling regarding potential claim procedures.

(c) *Documents.* Claims office personnel must obtain from the claimant or from the transportation office the following documents needed to process recovery actions:

(1) A copy of the GBL or other document used for shipment or storage.

(2) A copy of the inventory.

(3) A copy of the DD Form 1840 and DD Form 1840R.

(4) Where storage in transit was extended from 180 days to 270 days, a copy of the authorization from the transportation office allowing this extension at Government expense.

(5) Where storage converted from Government paid storage to storage at owner's expense, a copy of the claimant's contract with the warehouse.

(6) When necessary, a copy of DD Form 1164, Service Order for Personal Property, from the transportation office.

(7) When necessary, DD Form 619–1, Statement of Accessorial Services Performed, from the transportation office.

(d) *Carrier inspection.* Claims office personnel should inform claimants that the carrier has the right to inspect damaged goods within 75 days of delivery, or 45 days of dispatch of DD Form 1840R, whichever is later, and that damaged items must be held out for carrier inspection during that period. Essential items such as washer, dryer, television etc., may be repaired prior to that time if necessary.

(e) *Repair estimates.* Claims personnel must ensure that repair estimates describe the specific location and damage claimed and that the same damage is claimed on DD Form 1844, Schedule of Property and Claims Analysis Chart. Repair estimates that merely note "refinished" or "repaired" are not acceptable.

(f) *DD Form 1844.* Claims personnel must ensure that DD Form 1844 is properly completed with the nature and extent of the loss or damage to each item fully described, the correct inventory numbers supplied, and correct item weights utilized from the Military-Industry Table of Weights (when these weights are required for the code of service involved).

(g) *Demands on third parties.* Claims personnel must ensure that written demands against appropriate third parties are prepared as described in § 751.26 and § 751.27. No demand will be made where it conclusively appears that the loss or damage was caused solely by Government employees or where a demand would otherwise be clearly improper under the circumstances. If it is determined that a demand is not required, a brief written statement setting forth the basis for this determination will be included on the chronology sheet. Pursuant to the Joint Military-Industry Agreement on Claims of $25.00 or Less, claims of $25.00 or less will not be pursued because administrative costs outweigh recovery proceeds.

**§ 751.24 Notice of loss or damage.**

(a) *Exceptions.* The claimant is required to take exceptions and note any loss of damage at the time of delivery on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery). Later discovered damage must be noted on the DD Form 1840R (Notice of Loss or Damage) and delivered to the claims office or Personal Property Office within 70 days of delivery. Failure to take exceptions at delivery and note and report later discovered damage will result in deduction on any lost potential carrier recovery from payment of the claim. Failure to note on the DD Form 1840 items missing at the time of delivery may result in denial of claims for those items.

(b) *DD Form 1840/1840R.* The DD Form 1840/1840R is printed in carbon sets of five with DD Form 1840 on the front side and DD Form 1840R on the reverse side. DD Form 1840/1840R is provided by the carrier to the member at delivery. Carriers were required to use this revised DD Form 1840/1840R beginning 15 August 1988 for international shipments and 15 September 1988 for domestic shipments. This is the only document the carriers will accept for reporting loss and damage to household goods. The requirement to list all know loss and damage at the time of delivery on the DD Form 1840 is a joint responsibility of the claimant and the carrier. If the carrier fails to give the claimant a DD Form 1840 at the time of the delivery, the carrier is liable for all damage and does not have to be notified in the 75-day timeframe

(c) *Military-Industry Memorandum of Understanding on Loss and Damage Rules.* The Military-Industry Memorandum of Understanding on Loss and Damage Rules became effective in 1985 with the implementation of the new DD Form 1840/1840R. This document should be thoroughly studied and completely understood.

**§ 751.25 Types of shipments and liability involved.**

(a) *Codes 1 and 2 (domestic including Alaska).* Increased released valuation, also referred to as "Basic Coverage," became effective within CONUS and Alaska on 1 April 1987 for intrastate shipments (shipments within a single State), and on 1 May 1987 for interstate shipments (shipments from one.State to another). For Codes 1 and 2 shipments picked up after these dates, the carrier's released valuation (the carrier's maximum liability for loss and damage) increased from $.60 per pound per article to $1.25 multiplied by the net weight of the shipment ($2.50 for shipments to and from Alaska). For Codes 1 and 2 shipments picked up prior to these dates, carrier liability remains at $.60 per pound per article and is calculated the same as for Code 4 shipments. There are also two higher levels of coverage available in which the owner pays the difference between the basic coverage and the higher level requested: High or higher increased released valuation (Option 1) and full replacement protection (Option 2). These higher carrier released valuation rates only apply to Codes 1 and 2 shipments and they do not affect the liability of a non-temporary storage (NTS) warehouse which remains at $50.00 per line item.

(1) *Increased Released Valuation (IRV).* IRV is the basic valuation for service Codes 1 and 2 and is fully paid by the Government. If the claimant is due additional recovery money, the words "claimant due carrier recovery" must be added on the claims file to ensure the recovered amount is provided to the claimant if eligible. IRV is not reflected on the GBL by an special language. For Codes 1 and 2 shipments picked up after the effective dates mentioned above, the carrier's released valuation is $1.25 multiplied by the new weight of the shipment ($2.50 multiplied times the net weight of the shipment for shipments to and from Alaska). For example, if the weight of an IRV shipment moved from Kansas to New York is 10,000 pounds, the most the carrier could be held liable for would be $12,500 (10,000 pounds times $1.25=$12,500). If the same shipment was moved from Alaska to New York, the maximum carrier liability would

instead be $25,000 (10,000 pounds times $2.50=$25,000).

(2) *Higher Increased Released Valuation (Option 1).* This type of coverage may be purchased by an owner who desires protection for items whose value exceeds a maximum allowance or for a shipment whose value exceeds the statutory maximum. If the claimant is due additional recovery money, the words "claimant due carrier recovery" must be added in the claims file. Option 1 must be annotated on the original GBL. A GBL correction notice is acceptable only if the carrier or his agent has notice of the correction before pick-up. Option 1 may be listed in block 27 or block 30 either as a lump sum, such as "Option 1—$30,000," or as a multiple, such as "Option 1—$3.00 times the net weight." The carrier's maximum liability is whatever higher valuation the claimant places on the shipment. For example: The owner of a 10,000 pound shipment requests Option 1 coverage of $30,000.00 and has this listed on the GBL. The carrier's maximum liability is $30,000.00. Under basic coverage, the carrier's maximum liability for this shipment would only be $12,500.00. The claimant must initially file a claim with the carrier. The Government will only accept a claim if the carrier denies the claim, if delay would cause hardship, or if the carrier fails to satisfactorily settle the claim within 30 days. The claim is adjudicated in the normal fashion, applying depreciation and maximum allowances. Demand is then made on the carrier for the full value of the item lost or damaged. When recovery is effected, the Government keeps an amount equal to that paid to the claimant and disperses the remaining recovery to the claimant.

(3) *Full Replacement Protection (Option 2).* This type of coverage may be purchased by an owner who desires protection for items whose value exceeds a maximum allowance, for a shipment whose value exceeds the statutory maximum, or because the claimant does not wish to have the replacement cost of destroyed or missing items depreciated to their fair market value. The minimum coverage available under Full Replacement Protection is $21,000.00 or $3.50 times the net weight of the shipment, whichever is greater. A member who chooses this coverage must initially file a claim with the carrier, allowing the carrier the right to repair or replace items. The Government will only accept a claim if the carrier denies the claim, if delay would cause hardship, or if the carrier fails to satisfactorily settle the claim within 30 days. If a claim is submitted to the Government, the claim is adjudicated normally, applying depreciation and maximum allowances. The claimant should be informed that any additional amount will be forwarded after recovery action is effected against the carrier. Option 2 must be annotated on the original GBL. A GBL correction notice is acceptable only if the carrier or his agent receives notice of the correction before pick-up. Option 2 may be listed in block 27 or block 30 either as a lump sum, such as "Full Replacement Protection—$50,000.00," or as a multiple, such as "Full Replacement Protection—$3.50 times the net weight." The carrier's maximum liability is the higher valuation the claimant places on the shipment. For example: The owner of a 10,000 pound shipment requests full replacement protection of $3.50 times the net weight of the shipment and has this listed on the GBL. The carrier's maximum liability is $35,000.00 (10,000 pounds times $3.50=$35,000.00). Under basic coverage, the carrier's maximum liability for this shipment would only be $12,500.00.

(4) *Calculating liability on IRV, Option 1, and Option 2 shipments.* (i) Under IRV and Option 1, the carrier's maximum liability for loss or damage to a single item is limited to the repair cost or depreciated replacement cost of the item. Under Option 2, the carrier's maximum liability for a single item is the repair cost or the undepreciated replacement cost of the item. The carrier's maximum liability for the entire claim is limited to the released valuation, which is either the lump sum declared by the owner or the net weight of the shipment times the applicable multiplier. The net weight of the shipment is normally listed in block 4 of DD Form 1840 (block 3 of DD Form 1840 dated September 84). If the net weight is missing, it should be obtained from the transportation office.

(ii) In completing the carrier liability section of DD Form 1844, ignore the Joint Military-Industry Table of Weights. Assert the amount adjudicated on each item for which the carrier is liable in the carrier liability column. Where the Government payment was limited by application of a maximum allowance (or by depreciation on full replacement cost claims), assert the full, substantiated value. Total the amounts for which the carrier is liable in the carrier liability column. If this total exceeds the maximum carrier liability for the entire claim, the maximum carrier liability should be entered on DD Form 1843 as the amount demanded. Do not, however, change the total of the amounts for which the carrier is liable on the DD Form 1844.

(iii) If the amount the claimant receives from the Government is limited by application of a maximum allowance (or by depreciation on full replacement protection claims) leaving the claimant with an uncompensated loss, the claimant may be due reimbursement from recovery money after recovery is effected on the claim. Claimants with uncompensated losses who have basic coverage are only entitled to reimbursement from recovery money if the amount recovered exceeds the amount paid by the Government (unless the loss was in excess of the statutory maximum). Claimants with uncompensated losses who purchased Option 1 or Option 2 are entitled to reimbursement up to the value of their additional coverage. Such files should be marked: "claimant due carrier recovery." The claimant should be informed that recovery from the carrier is dependent on the amount and quality of the substantiation the claimant provided, and that the actual recovery may be less than anticipated. The claimant should further be informed that considerable time will elapse before recovery is effected and reimbursement made. Such claims should be processed for recovery action as expeditiously as possible.

(b) *Codes 4 and 6 (International and Hawaii).* On Codes 4 and 6, international GBL shipments, carrier liability is computed at $.60 per pound multiplied by the weight of the article or carton as prescribed by the Joint Military-Industry Table of Weights. In cases where the entire shipment is lost or damaged, liability will be computed on the net weight of the shipment times $.60 per pound. The net weight of the shipment may be obtained from the origin transportation office.

(c) *Codes 5 and T (International and Hawaii).* (1) A Code 5 shipment is the movement of household goods in Military Traffic Management Command (MTMC) approved door-to-door shipping containers (wooden boxes) and where a carrier provides line-haul service from origin residence to a military ocean terminal. The Government, through the Military Sealift Command (MSC), provides ocean transportation to the designated port of discharge, and the carrier provides line-haul service to the destination residence.

(2) A Code T shipment is the movement of household goods where the carrier provides containerization at origin and transportation to the designated Military Airlift Command

(MAC) terminal. MAC provides terminal services at both origin and destination, and air transportation to a designated MAC terminal. The carrier provides transportation to the destination residence.

(3) On Code 5 and T shipments, it is often difficult to decide whether the Government or the carrier was in actual custody of the shipment at the time of loss or damage. In order to reduce liability disputes in such situations, a 50-percent compromise agreement between industry and the military has been reached.

(4) When the 50-percent compromise is appropriate or applicable, the DD Form 1844 is prepared in the normal fashion utilizing weights indicated in the Military-Industry Table of Weights multiplied by $.60 per pound. Two different sums should be listed for carrier liability at the bottom of the DD Form 1844, the amount of liability due under the 50-percent compromise and the full amount that will be offset if carrier fails to pay, e.g., "$100.00 Code T, $200.00 Full Liability." This same computation should be reflected in the "amount of claim" box on DD Form 1843 (Demand on Carrier/Contractor). If a carrier refuses to make a satisfactory settlement or fails to make a timely response to the demand, the carrier's full liability will be collected.

(d) *Codes 7, 8, and J (Unaccompanied Baggage Shipments). Gross Weight Rules.* Government payment to the carrier for transportation of unaccompanied baggage (Codes 7, 8, and J) is based upon gross weight of the shipment. Unless the inventory is prepared as a "Proper Household Goods Descriptive Inventory," computation of carrier liability for loss or damage incurred in a Code 7, 8, or J shipment will also be based upon gross weight. Gross weight is defined as the total weight of all articles, including necessary packing materials and packing containers. The shipping container is the external crate (tri-wall or other Government approved container) into which individual articles and/or packing cartons are placed. For the majority of claims, liability will be asserted on gross weight of the container.

(2) *Baggage shipments prepared using a "Proper Household Goods Descriptive Inventory."* The Joint Military/Industry Table of Weights will apply to Code 7, 8, or J unaccompanied baggage shipments if the inventory has been prepared as a "Proper Household Goods Descriptive Inventory," in accordance with Paragraph 54 of the Tender of Service for Personal Property Household Goods and Unaccompanied Baggage (DOD 4500.34–R, appendix A). A properly prepared inventory should reflect the size of each individual carton, give a general description of carton contents, and note preexisting damage. The complete inventory, not just a portion, must have been prepared as a proper household goods inventory. If an inventory is only partially prepared as a proper household goods descriptive inventory, gross weight will be used.

(e) *Local moves and NTS.* There are basically two types of NTS shipments: A direct delivery from NTS by the same company that stored the property and a delivery from NTS which was picked up at the warehouse by a GBL carrier. Direct deliveries of household goods from NTS are often erroneously construed as local moves. It is sometimes difficult to tell the difference between the two since a shipment delivered from NTS by the warehouseman is usually also a short distance (local) move. The type of contract involved determines whether or not the shipment is considered a local move, a direct delivery from NTS, or a carrier delivery picked up from NTS. These distinctions are important since different liability is involved.

(1) *Local move.* A local move is a shipment performed under a local contract that authorizes property to be moved from one residence to another within a specified area (usually a move from off base to on base, or the reverse). The contract for a local move is the purchase order prepared by the transportation office which lists the services required of the carrier in accordance with the provisions of the Federal Acquisition Regulation (FAR). The purchase order usually includes packing and picking up the goods at origin residence or from storage, transporting the goods within a designated distance, and delivering and unpacking the goods at destination. All these services are performed under the authority of one purchase order and will usually be accomplished the same day or within a few days of pickup. Timely notice must exist in order to pursue carrier recovery and liability is usually based on a released valuation of $.60 per pound per article. The Joint Military/Industry Table of Weights is used to calculate liability. There is no insurance coverage required on local contractors; if the local contractor is no longer in business or bankrupt, the file may be closed.

(2) *Direct delivery from NTS.* In circumstances where one contractor is responsible for pick-up, NTS, and delivery of the shipment, liability for loss or damage is assessed against that carrier. Nontemporary storage of household goods requires completion of DD Form 1164 (Service Order for Personal Property) in accordance with the provisions of the Basic Ordering Agreement (BOA). The "handling-in" portion of the shipment is accomplished by issuance of the Initial Service Order, DD Form 1164. The goods are usually stored for a period of 6 months to 4 years. The "handling-out" and post-storage services are accomplished by a supplemental service order. These are usually long term storage, short distance moves processed under the authority of at least two documents: the initial service order and the supplemental service order. The BOA states that the contractor shall be liable "in an amount not exceeding fifty dollars ($50.00) per article or package listed on the warehouse receipt or inventory form" (i.e., $50.00 per inventory line item).

(3) *Carrier delivery picked up from NTS.* The NTS portion of the shipment requires completion of an Initial Service Order, DD Form 1164, to accomplish the "handling-in" of the goods into the warehouse for storage, as prescribed by the provisions of the BOA. When storage is terminated, the "handling-out" and post-storage services are accomplished by issuance of a GBL in accordance with the tender of service. The GBL may be issued to a different company or in some cases to the same company that stored the goods. These are long-term storage, long-distance moves processed under the authority of two documents: the initial service order and the GBL. Liability is assessed entirely against the delivering carrier at whatever rate is appropriate for the code of service involved, unless the carrier prepares an exception sheet (rider) noting damage or loss at the time the goods are picked up from the warehouse. The exception sheet must be signed by a warehouse representative. If a valid exception sheet exists, liability for items noted on the exception sheet is assessed against the NTS warehouse at $50.00 per inventory line item. An exception sheet should be prepared by the GBL carrier who picks up the goods from NTS even if that carrier is the same company that stored the goods. This is necessary in order to relieve the carrier from liability as a carrier. If either the carrier alone, or both the carrier and the NTS facility, fail to pay their proper liability, the file is forwarded to the Naval Material Transportation Office, (NAVMTO), Norfolk, Virginia for offset action.

(f) *Direct Procurement Method (DPM).* (1) A DPM move is a method in which the Government manages the shipment from origin to destination. Contracts are

issued to commercial firms for packing, containerization, local drayage, and storage services, or Government facilities and employees provide these services. Separate arrangements are made with carriers and separate documents are issued for each segment throughout. DPM contractors are also known as packing and crating (P&C) contractors, as local drayage contractors, or just as local contractors.

(2) GBL's for DPM shipments are usually only issued to motor freight carriers.

(i) Block 3 on the GBL entitled "service code" will contain the letters A, B, H, or V, followed by a second letter A, H, K, N, P, R, W, X, or Y. These two letter codes identify the GBL as a DPM contract.

(ii) Block 18, "consignee," and Block 19, "from," on the GBL contain the name and address of another carrier or transportation office rather than the name and address of the claimant.

(iii) Block 27, "description of shipment," on most GBL's contains the statement, "household goods released at a value of 10 cents per pound per article." This refers to the motor freight carrier's liability only. The origin and destination contractors' liability is still $.60 per pound times the weight of the article or carton, as indicated in the Joint Military/Industry Table of Weights.

(iv) If liability lies against the motor freight carrier, the term "article" is defined as the weight of each packed item, such as the weight of a broken dish within a carton rather than the net weight of a carton, as used against the origin and destination contractors. Liability is computed against the motor freight carrier at a rate of $.10 per pound times the weight of the article.

(3) Since 1 January 1981 the destination contractor has been held liable for loss and damage unless it can prove that it is not at fault, i.e., took exceptions prior to receipt of goods. The motor freight carrier is liable for any damage or loss noted against it during its portion of the move. If the motor freight carrier has noted specific damage when it received the shipment, liability is charged against the origin contractor at $.60 per pound times the weight of the article or carton. Damage noted against the origin contractor or motor freight carrier should be indicated on a valid shipping document and generally involves distinct damage to or missing containers. These documents must be signed by all parties involved in the transfer of the goods.

(4) The destination contractor must receive timely notice of loss or damage via DD Form 1840/1840R and a demand packet. If exceptions were taken against the origin contractor or motor freight carrier on a transfer document, they should receive only demand packets.

(5) In determining destination or origin contractor's liability, the term "article" has been defined as each shipping carton or container and the contents thereof, less any exterior crate or shipping carton. The net weight of each article (carton or box) packed within the exterior crate or carton may be used to determine the contractor's liability for a damaged or missing item originating out of that carton.

(6) Claims offices should obtain a copy of the DPM contract from the local contracting office or transportation office in order to identify which company has the DPM contract and verify the limits of the liability clause. Contracts are awarded on a calendar-year basis.

(g) *Mobile homes.* Mobile home claims represent such a small percentage of claims received that claims personnel are often unfamiliar with the requirements and documentation necessary to process such claims. For an explanation of the adjudication of such claims and the forms used to effect shipment, see § 751.12(g) above.

(1) *Carrier liability*—(i) *For damage to the mobile home.* Carrier liability for damage to a mobile home is generally the full cost of repairs for damage incurred during transit. A mobile home carrier is excused from liability when the carrier can introduce substantial proof that a latent structural defect (one not detectable during the carrier's preliminary inspection) caused the loss or damage.

(ii) *For damage to contents.* The carrier's liability for loss or damage to household or personal effects inside the mobile home (such as clothing and furniture. or furnishings which were not part of the mobile home at the time it was manufactured) is limited to $250.00 unless a greater value is declared in writing on the GBL. Under the Mobile Home One-Time-Only (MOTO) rate system, effective for shipments after 1 November 1987 the owner no longer prepares his own inventory. Under the MOTO system, the carrier in coordination with the owner is required to prepare a legible descriptive inventory on DD Form 1412, Inventory of Articles Shipped in House Trailer.

(iii) *Agents of the mobile home carrier.* If the shipment is transferred to another mobile home carrier for transport, the first carrier will continue to be shown on the GBL and is responsible for the mobile home from pickup to delivery. The carrier is also responsible for damage caused by third parties it engages to perform services such as auxiliary towing and wrecking.

(iv) *Water damage.* Water damage to a double-wide or expando-type mobile home is usually due to the carrier's failure to provide sufficient protection against an unexpected rainstorm. Carriers will often assert that this damage is due to an "act of God" and attempt to avoid liability. It is, however, the carrier's responsibility to ensure safe transit of the mobile home from origin to destination. Not only should carriers be aware of the risk of flash floods and storms in certain locales during certain seasons, but a carrier is supposed to provide protective covering over areas of the mobile home exposed to the elements. Carrier recovery should be pursued for water damage to these types of mobile homes.

(v) *Waivers signed by the claimant.* The carrier may attempt to escape liability by having the owner execute a waiver of liability. Such waivers are not binding upon the United States.

(vi) *Extensions of storage in transit (SIT).* The extension of SIT past 180 days is only applicable to household goods and holdbaggage shipments. It is not applicable to the shipment of mobile homes. If a mobile home remains in SIT past 180 days, storage is at the owner's expense.

(2) *Notice.* Item 306 of the carrier's rate solicitation states that: "Upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late(r) discovered loss or damage, including personal property within the mobile home, will be noted on DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt." Notification to the carrier may be made on any of the documents. Claims personnel will dispatch the DD Form 1840R in accordance with § 751.14.

(3) *Preparation of demands.* The carrier is liable for the full amount of substantiated damage to the mobile home itself (less estimate fees), plus up to $250.00 for loss or damage to contents (unless the claimant purchased increased released valuation on the contents). Prepare a demand for this amount. In addition to the DD Form 1843 and DD Form 1844, the demand packet should include the following documents:

(i) DD Form 1800, Mobile Home Inspection Record;

(ii) DD Form 1863, Assessorial Services, Mobile Home;

(iii) DD Form 1840/1840R, Joint Statement of Loss or Damage at Delivery/Notice of Loss;

(iv) DD Form 1412, Inventory of Items Shipped in House Trailer;

(v) DD Form 1841, Government Inspection Report;

(vi) Driver's statement, from the driver of the towing vehicle;

(vii) Claimant's statement concerning previous moves;

(viii) Estimates of repair, preferably two, from firms in the business of repairing mobile homes; and

(ix) Engineer's statement, or statement by other qualified professionals.

(4) *References.* Chapter 3 and Appendix E of DOD 4500.34–R, pertain to mobile home shipment and contain much valuable information. Another source is NAVSUP 490, Chapter 10 "Mobile Homes of Military Personnel."

**§ 751.26 Demand on carrier, contractor, or insurer.**

(a) *Carrier.* When property is lost, damaged, or destroyed during shipment under a GBL pursuant to authorized travel orders, the claims investigating officer or adjudicating authority (whichever can more efficiently perform the task) shall file a written claim for reimbursement with the carrier according to the terms of the bill of lading or contract. This demand shall be made against the last carrier known to have handled the goods, unless the carrier in possession of the goods when the damage or loss occurred is known. In this event, the demand shall be made against the responsible carrier. If it is apparent the damage or loss is attributable to packing, storing or handling while in the custody of the Government, no demand shall be made against the carrier.

(b) *Marine Corps claimants.* For Marine Corps claimants, the claims investigating officer will prepare the claim against the carrier, contractor, and/or insurer and will mail it (together with the DD Form 1842 claim package) to the Commandant of the Marine Corps (MHP–40), who will submit and assume the responsibility of monitoring the claim against the carrier.

(c) *NTS warehousemen.* Whenever property is lost, damaged, or destroyed while being stored under a basic agreement between the Government and the warehouseman, the claims investigating officer, or appropriate Naval Legal Service Command (NLSC) activity, shall file a written claim for reimbursement with the warehouseman under the terms of the storage agreement.

(d) *Insurer.* When the property lost, damaged, or destroyed is insured, the claimant must make a demand against the insurer for payment under the terms of the insurance coverage within the time provided in the policy. If the amount claimed is clearly less than the policy deductible, no demand need be made. Failure to pursue a claim against available insurance will result in reducing the amount paid on the claim by the amount which could have been recovered from the insurer. When an insurer makes a payment on a claim in which the Government has made a recovery against the carrier or contractor, the insurer shall be reimbursed a pro rated share of any money recovered.

**§ 751.27 Preparation and dispatch of demand packets.**

Demand on a carrier or contractor shall be made in writing on DD Form 1843 (Demand on Carrier) with a copy of the adjudicated DD Form 1844 (Schedule of Property) attached.

(a) *Demand packets.* A demand is a monetary claim against a carrier, contractor, or insurer, to compensate for loss or damage incurred to personal property during shipment or storage. DD Form 1843 represents the actual demand. The demand packet is a group of documents, stapled together and sent to the liable third party. More than one demand packet should be prepared when more than one party is deemed to be liable. Do not use original documents. Demand packets should be mailed in official DON envelopes. No demand packet should be prepared for claim files that have been closed or when potential recovery is $25.00 or less. In those cases the outside of file folders in the upper left-hand corner should be marked "CLOSED." A demand packet will include the following:

(1) DD Form 1843, Demand on Carrier/Contractor;

(2) DD Form 1844, Schedule of Property and Claim Analysis Chart;

(3) DD Form 1841, Government Inspection Report (if available);

(4) DD Form 1164, Service Order for Personal Property (when applicable);

(5) Copies of all repair estimates (translated from foreign languages); and

(6) Copies of all other supporting documents deemed appropriate.

(b) *Dispatch of demand packets.* (1) The demand packets are directly dispatched by the appropriate personal property office or the Naval Legal Service Office to the third party.

(2) *Privately Owned Vehicles (POV's).* Demands for loss or damage to POV's will not be made directly against ocean carriers operating under contract with the MSC. After payment is made to the claimant, one copy of the complete claim file will be forwarded directly to Commander, MSC. Each file shall include the following:

(i) The payment voucher;

(ii) The completed personnel claim forms;

(iii) The estimated or actual cost of repair;

(iv) A document indicating the conditions of the items upon delivery to the carrier; and

(v) a document indicating the forwarding condition of the POV upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available, the sailing date.

**§ 751.28 Assignment of claimants rights to the government.**

The claimant shall assign to the Government, to the extent of any payment made on the claim, all rights and interest the claimant may have against any contractor, carrier, or insurer or other party arising out of the incident on which the claim is based. The claimant shall also furnish such evidence as may be required to enable the Government to enforce its claim. If the claimant refuses to cooperate, steps may be taken to ensure return of monies paid on the item which the Government is trying to collect.

**§ 751.29 Recoveries from carrier, contractor, or insurer.**

(a) *Recoveries.* If a claimant receives payment from the Government under this instruction and also receives compensation from a carrier, contractor, or insurer for the same loss, the Government shall collect from the claimant the amount necessary to prevent the claimant from being compensated twice for the same loss. If the amount payable on a claim is less than the adjudicated value of the claim, excess recoveries from carriers, and other third parties shall be paid to the member as long as the total amount paid does not exceed the value of the claim as adjudicated.

(b) *Recovered property.* When lost property is found, the claimant may, at his option, accept all or part of the property and return the full payment or a pro-rated share of the payment received from the Government on the claim for the recovered property. Surrendered property shall be disposed of under applicable salvage and disposal procedures.

**§ 751.30 Settlement procedures and third party responses.**

(a) *Settlement procedures.* In the interest of expeditious office administration, correspondence to

carriers and contractors should be kept to a minimum. Normally, one rebuttal to a third party's denial of liability is sufficient, unless the carrier or contractor raises new arguments or provides new information.

(1) *Checks from third parties.* Accept checks for the amount demanded from carriers and contractors. If a carrier or contractor forwards a check for less than the amount demanded, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in the light of all evidence, deposit the check and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED."

(2) *Third party offers of settlement.* If a carrier or contractor offers to settle the claim, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in light of all evidence, inform the carrier that the offer is accepted, but that offset action will be initiated if a check for that amount is not received within 45 days. If a check in the amount acceptable to the Government is received, deposit it and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED." If a check in the proper amount is not received within 45 days, send the request to NAVMTO, Norfolk (or appropriate contract officer) for offset action (see § 751.32 of this part).

(3) *Unacceptable third party checks and offers of settlement.* If a third party's basis for denying liability is not valid, respond to that carrier or contractor. Return unacceptable checks. Explain the reasons for not accepting the check or offer, and request the amount that is justified under the circumstances in the light of all the evidence. If a release was included, amend the release to the revised amount and sign, date, witness, and return it. Warn the carrier or contractor that the claim will be forwarded for offset action if a check for the amount justified under the circumstances is not received within 45 days. Suspend the file for 45 days and if a check in the proper amount is received, deposit it and dispatch the unearned freight letter, if applicable. If a check in the proper amount is not received within 45 days, request NAVMTO, Norfolk (or appropriate contract officer) to take offset action.

(4) *Third party denials of liability.* Upon receipt, review the carrier or contractor's basis for denying liability in the light of all the evidence.

(i) *Acceptable third party reasons for denial.* Mark the front upper left-hand corner of such files as "CLOSED."

(ii) *Partially acceptable and unacceptable third party reasons for denial.* If the carrier or contractor's basis for denying liability is acceptable only in part or is completely unacceptable, follow the procedures in subparagraph (3) above, requesting the amount that is justified under the circumstances in the light of all the evidence. If a response is not received within 45 days, or if the third party's reply is not responsive, request NAVMTO, Norfolk (or appropriate contract officer) take offset action as described above.

(b) *Depreciation.* In determining payments to claimants, the depreciation rates from the Allowance List—Depreciation Guide are used. In determining third party liability, however, a different depreciation guide, the Joint Military/Industry Depreciation Guide is used instead. In most instances, the depreciation rates are the same in both guides, and claims personnel are not required to consult the Joint Military/Industry Depreciation Guide or alter the depreciation taken on items prior to dispatching demands. If, however, a carrier or contractor objects to the depreciation rate utilized for certain items, consult the Joint Military/Industry Depreciation Guide and use the depreciation rate found in that guide if it differs from the rate in the Allowance List-Depreciation Guide.

**§ 751.31 Common reasons for denial by carrier or contractor.**

The following are common reasons given for denial of an entire claim, or for individual items on a claim. Each reason for denial is followed by a short discussion of the validity of such a denial.

(a) *The carrier alleges that valid exceptions were made at the time of pickup from the NTS facility.* When a carrier provides an exception sheet it contends was made at time of transfer, this exception sheet must bear the signature of a representative of the NTS facility. Without a signed exception sheet there is no evidence that the NTS facility was made aware of these exceptions and given the opportunity to confirm or deny the alleged condition of the items in question. The burden of proof is on the carrier to provide the valid exception sheet and establish its freedom from liability.

(b) *The carrier denies liability for missing or damaged item packed in cartons because it did not pack the shipment and the cartons did not show outside damage.* When a carrier accepts a shipment in apparent good order, it is responsible for damage to packed items, unless it can prove that the packing was improper and was the sole cause of the damage.

(c) *The carrier contends that the mildew damage occurred in NTS and not during its transport of the shipment.* Mildew formation is more likely to occur in NTS than in transport. Unsupported by evidence, however, an allegation that mildew formation occurred during NTS does not rebut the established prima facie case of a carrier liability. A carrier must prepare an exception sheet and note any mold or mildew damage when the items were picked up from the NTS facility. The burden of proof is on the carrier to show that it was free from negligence and that the damage was due solely to the formation of mildew or mold during the NTS storage.

(d) *The carrier claims that damage is due to "inherent vice."* Although the carrier may allege that damage was due to "inherent vice," the mere allegation of "inherent vice" is insufficient to relieve the carrier of liability. The burden of proof is on the carrier to establish that an "inherent vice" existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to "inherent vice" is seldom acceptable.

(e) *The carrier contends that it was denied the right to inspect.* Often a carrier will state that it made several attempts to make an inspection, but the shipper failed to keep the appointment. If such a case exists, the proper procedure for the carrier to follow is to contact the claims office for assistance in accomplishing the inspection within a timely manner. A carrier's efforts to obtain the inspection should be documented in the file by claims personnel. Lack of an inspection alone, however, does not relieve the carrier of liability and is insufficient to rebut a well-established prima facie case of liability.

(f) *The carrier denies liability on missing items because the items do not appear on the new inventory made at pickup from the NTS facility.* When a carrier picks up a shipment from NTS and chooses to prepare a new inventory, it must use identical or cross-referenced numbers. If an article such as a chair or a lawnmower is missing, it must be indicated as "missing" on the new inventory. Whether or not a new inventory is made, an exception sheet must be prepared and the missing articles must be noted thereon. To relieve the carrier of liability, both the new inventory and the exception sheet

must be signed by representatives of the NTS facility and the carrier.

(g) *The carrier denies liability due to "act of God."* An act of God is an event that could not have been prevented by human prudence. It is generally seen as an occurrence in which human skill or watchfulness could not have foreseen the disaster. The burden of proof is on the carrier to establish that an "act of God" existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to an "act of God" is generally not acceptable. The carrier cannot avoid liability if it has been negligent in exposing the goods to potential danger or if it failed to take reasonable steps to reduce the extent of the injury once the danger was discovered.

(h) *The carrier contends that the claimant's repair estimate is excessive and that its own repair firm can do the job cheaper.* A claimant has the right to select a repair firm provided the cost is reasonable and not in excess of the item's value. The carrier is liable for the reasonable cost of repairing damaged merchandise that includes labor, material, overhead, and other incidental expenses incurred in reconditioning or putting the goods in salable condition. If the carrier did not provide the claims office with an acceptable, lower estimate to use in adjudicating the claim, and if the claimant's estimate is reasonable, then the carrier is liable for the amount paid the claimant.

(i) *The carrier contends that liability should have been predicated on the agreed weight of a sofa and not a hide-a-bed.* This argument only applies when carrier liability is based on weight. At the time the inventory is prepared, the carrier's driver must establish whether a sofa is merely a sofa, or one that converts into a bed. Failure to properly identify the item on the inventory does not relieve the carrier of liability for the greater weight of a sofa bed.

(j) *The carrier argues that it is not responsible for warpage, rust, etc., due to climatic changes.* This argument does not relieve a carrier of liability unless the carrier offers substantial evidence to show that the damages resulted solely from unusual circumstances beyond its control, as with an "act of God," or that it occurred while the property was in the hands of another contractor, as reflected upon a valid NTS exception sheet. The burden of proof is on the carrier to establish that the damage was not due to its negligence and that circumstances beyond its control were the sole cause of the loss. Because the carrier can rarely establish this, denial due to "climatic changes" is rarely acceptable.

**§ 751.32 Forwarding claims files for offset action.**

(a) *General.* Claim files are forwarded with a recommendation for offset action when 120 days have passed since a demand and a response has not been received from the carrier or contractor. Files are also forwarded for offset action when an impasse is reached. An impasse occurs when legitimate efforts to collect the fully justified amount demanded have reached a standstill and the carrier has no valid basis for denial. Prior to forwarding files for offset action, claims personnel must ensure that timely notice has been given, that all necessary documents are included, and that the demand and any correspondence were mailed to the proper carrier or contractor at its correct address. When applicable, claims personnel must also ensure that an unearned freight packet is included.

(b) *Claim files forward to local contracting offices.* Claims forwarded to local contracting offices for offset action include claims involving local moves and DPM shipments in which the origin and/or destination contractor is determined to be liable. When the contractor fails to reply to a demand within 120 days or fails to make an acceptable offer, the file should be forwarded to the local contracting office with a request for offset action.

(c) *Unjustified denials and inadequate settlement offers by carrier or contractor*—(1) *GBL carriers.* If a GBL carrier or insurer has refused to acknowledge or respond to a demand within a reasonable time (usually 30 days), if the claims investigating officer considers a valid claim to have been denied or not adequate settlement offered, or if settlement has been delayed beyond 120 days (see § 751.32(a)), the claim shall be forwarded to the NLSC activity serving the geographical location recommending that set-off action be taken against the carrier or contractor. The 120-day period begins to run on the date initial demand is made on the carrier. The NLSC activity shall review the file and if the carrier liability is correctly computed, forward a copy of the GBL, copies of the DD Forms 1843 and 1844, SCAC code, and final demand on carrier to the Commanding Officer, Naval Material Transportation Office, Code 023, Bldg. Z–133–5, Naval Station, Norfolk, VA 23511 directing set-off action against the carrier or contractor.

(2) *Nontemporary warehousemen.* If a warehouseman or insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if settlement has been delayed beyond 120 days, the claim shall be referred to the NLSC activity serving the geographic location recommending set-off action be taken against the contractor. The 120-day time period begins to run on the date the initial demand was made. The NLSC activity shall review the file and if the warehouseman's liability is correctly computed, forward the file to the appropriate MTMC Regional Storage Management Office for set-off.

**§ 751.33 Unearned freight packet.**

(a) *Preparation.* An unearned freight packet should be prepared when the loss or destruction of an item in shipment is attributable to a GBL carrier. Unearned freight packets should be addressed to the carrier, and not to the agents of GBL carriers, NTS contractors, or other contract movers. An unearned freight packet is required when a mobile home is lost or completely destroyed. An unearned freight packet includes:

(1) A Request For Deduction of Unearned Freight Charges;

(2) A copy of DD Form 1843;

(3) A copy of DD Form 1844; and

(4) A copy of the GBL.

(b) *Dispatch.* The unearned freight packet is not dispatched to the NAVMTO, Norfolk until the carrier has paid its agreed liability or when offset has been accomplished.

**§ 751.34 GAO appeals.**

(a) *General.* Sections 1 through 12 and 52 through 65 of Title 4, GAO Manual, Policy and Procedures Manual for Guidance of Federal Agencies, and 4 CFR parts 30–32 set forth procedures for carriers to appeal setoff action. Before a carrier can appeal a setoff action to GAO, the command requesting setoff action must make an administrative report to GAO.

(b) *Procedures for appeals.* (1) The carrier must request appeal from the command requesting setoff action and request a GAO review.

(2) The command requesting setoff action will review the appeal and if it is determined the setoff action was appropriate, will do an administrative report and notify the carrier when this has been accomplished.

(3) The administrative report and complete claims file will be forwarded to the NLSC activity serving the geographic location for review prior to forwarding to GAO.

(4) The complete claims package, including all correspondence with the carrier, will then be forwarded to GAO.

(c) The administrative report and enclosures must support the setoff action.

(d) *GAO Manual.* All NLSC activities have been provided a copy of a manual published by the Claims Group General Government Division, U.S. General Accounting Office entitled Procedures of the U.S. General Accounting Office for Household Goods Loss and Damage Claims. Other commands dealing with carrier recoveries should get a copy of the manual from the NLSC activity servicing the local area.

**§ 751.35 Forms and instructions.**

Copies of all of the forms and instructions discussed in this part may be obtained if needed, from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

Dated: January 30, 1992.

**Wayne T. Baucino,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 92-3066 Filed 2-11-92; 8:45 am]

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## 32 CFR Part 757

## Affirmative Claims Regulations

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth amended regulations pertaining to the Department of the Navy's affirmative claims program. This rule reflects changes to JAG Instruction 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Captain Milton D. Finch, JAGC, USN, Deputy Assistant Judge Advocate General (Claims and Tort Litigation), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400, (703) 325-9880.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 133, 939, 5013, and 5148; E.O. 11476; and 32 CFR parts 700.206 and 700.1202; the Judge Advocate General revises 32 CFR part 757. This revision reflects changes to JAG Instruction 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States. This part has been revised and shortened. It sets forth the responsibilities and procedures for the supervision and management of the Navy's affirmative claims program and the investigation of claims under the various Affirmative Federal Claims Statutes. It also sets forth the procedures and responsibilities for the administrative processing and consideration of claims on behalf of the United States.

This revision was adopted on January 17, 1991. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal Naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of 32 CFR parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in Executive Order 12291, and does not have substantial impact on the public.

**List of Subjects in 32 CFR Part 757**

Claims.

For the reasons set out in the Preamble, title 32, part 757 of the Code of Federal Regulations is revised to read as follows:

## PART 757—AFFIRMATIVE CLAIMS REGULATIONS

**Subpart A—Property Damage Claims**

Sec.
757.1 Scope of subpart A.
757.2 Statutory authority.
757.3 Regulatory authority.
757.4 Claims that may be collected.
757.5 Assertion of claims and collection procedures.
757.6 Waiver, compromise, and referral of claims.
757.7—757.10 [Reserved]

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**Authority:** 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476, 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

## Subpart A—Property Damage Claims

**§ 757.1 Scope of subpart A.**

Subpart A describes how to assert, administer, and collect claims for damage to or loss or destruction of Government property through negligence or wrongful acts.

**§ 757.2 Statutory authority.**

(a) *General.* With the exception of MCRA claims, all affirmative claims for money or property in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 3711). Department of Defense Directive 5515.11 [1] of 10 December 1966 delegates to the Secretary of the Navy, and designees, the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

(b) *Statute of limitations.* There is a 3-year statute of limitations on affirmative Government tort claims pursuant to 28 U.S.C. 2415(b).

**§ 757.3 Regulatory authority.**

The regulations published in 4 CFR chapter II control the collection and settlement of affirmative claims. This section supplements the material contained in those regulations. Where this section conflicts with the materials and procedure published in 4 CFR chapter II, the latter controls.

**§ 757.4 Claims that may be collected.**

(a) *Against responsible third parties for damage to government property, or the property of nonappropriated-fund activities.* It should be noted, however, that as a general rule, the Government does not seek payment from servicemembers and Government employees for damages caused by their simple negligence. Exceptions to this general policy will be made when the incident involves aggravating circumstances.

(b) *For medical costs from third party payers in accordance with 10 U.S.C. 1095.* These claims are asserted and collected by the medical treatment facilities under the coordination of benefits program.

(c) *For money paid or reimbursed by the government for damage to a rental car in accordance with the Joint Federal Travel Regulations (volume 1, paragraph U 3415-C and volume 2, paragraph C 2101-2).* Collection action shall be taken against third parties liable in tort. Collection action shall not be taken against Government personnel who rented the vehicle.

(d) *Other claims.* Any other claim for money or property in favor of the United States cognizable under the Federal

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[1] Copies may be obtained if needed, from the Commanding Officer, U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

Claims Collection Act not specifically listed above.

**§ 757.5 Assertion of claims and collection procedures.**

(a) *General.* The controlling procedures for administrative collection of claims are established in 4 CFR part 102.

(b) *Officials authorized to pursue claims.* The following officers are authorized to pursue and collect all affirmative claims in favor of the United States:

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation); and

(2) Commanding officers of Naval Legal Service Offices and applicable Detachments, except Naval Legal Service Offices in countries where another service has single service responsibility in accordance with DOD Directive 5515.8.[2]

(c) *Dollar limitations.* All of the officers listed in § 757.5(b) are authorized to compromise and terminate collection action on affirmative claims of $20,000.00 or less.

(d) *Determining liability.* Liability must be determined in accordance with the law of the place in which the damage occurred, including the applicable traffic laws, elements of tort, and possible defenses.

(e) *Assertion of a claim.* (1) Assertion of the claim is accomplished by mailing to the tortfeasor a "Notice of Claim." The notice is to be mailed certified mail, return receipt requested, and should include the following information:

(i) Reference to the statutory right to collect;

(ii) A demand for payment or restoration;

(iii) A description of damage;

(iv) The date and place of the incident; and

(v) The name, phone number, and office address of the claims personnel to contact.

(2) See also 4 CFR part 102.

(f) *Full payment.* When a responsible party or insurer tenders full payment or a compromise settlement on a claim, the payment should be in the form of a check or money order made payable to the collection activity, such as the "Commanding Officer, Naval Legal Service Office, (Name)." The check or money order shall then be forwarded to the disbursing officer serving the collecting activity for deposit in accordance with the provisions of the Navy Comptroller Manual.

(g) *Installment payments.* See 4 CFR 102.11 for specific procedures. In general, if the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged. Installment payments will be required on a monthly basis and the size of payment must bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment agreements should specify payments of such size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50.00 per month should be accepted only if justified on the grounds of financial hardship or for some other reasonable cause. In all installment arrangements, a confession of judgment note setting out a repayment schedule should be executed.

(h) *Damage to nonappropriated-fund instrumentality (NAFI) property.* Any amount collected for loss or damage to property of a NAFI shall be forwarded to the headquarters of the nonappropriated-fund activity for deposit with that activity. In those situations where the recovery involves damage to both NAFI-owned property and other Government property, e.g., destruction of an exchange building resulting in damage to both the building and the exchange-owned property inside, recovery for the exchange-owned property shall be forwarded to the NAFI. Recovery for building damage shall be deposited in accordance with § 757.5(f) above.

(i) *Damage to industrial-commercial property.* When a loss or cost of repair has been borne by an industrial-commercial activity, payment shall be deposited in the Navy Industrial Fund of the activity in accordance with the provisions of the Navy Comptroller Manual. When a claim is based on a loss or damage sustained by such an activity, a notation to this effect shall be included in any claim file forwarded to the Judge Advocate General.

(j) *Replacement in kind or repair.* The responsible party, or insurer, may want to repair or replace in kind damaged property. The commanding officer or officer in charge of the activity sustaining the loss is authorized to accept repair or replacement if, in his discretion, it is considered to be in the best interests of the United States.

(k) *Release.* The commanding officer or officer in charge is authorized to execute a release of the claim when all repairs have been completed to the Government's satisfaction, and when all repair bills have been paid. No prior approval from the Judge Advocate General is required for this procedure. If repair or replacement is made, a notation shall be made in any investigation or claims file.

**§ 757.6 Waiver, compromise, and referral of claims.**

(a) *Officials authorized to compromise claims.* The officers identified in § 757.5(b) may collect the full amount on all claims, and may compromise, execute releases or terminate collection action on all claims of $20,000.00 or less. Collection action may be terminated for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has denied liability, or has refused to respond to repeated correspondence concerning legal liability involving a small claim. A termination for the convenience of the Government is made after it is determined that the case does not warrant litigation or that it is not cost-effective to pursue recovery efforts.

(b) *Claims over $100,000.00.* Claims in excess of $100,000.00 may not be compromised for less than the full amount or collection action terminated without approval from the Department of Justice (DOJ).

(c) *Notification.* The Judge Advocate General shall be notified prior to all requests made to the DOJ to compromise, terminate collection, or referral for further collection action or litigation.

(d) *Litigation Reports.* Litigation reports prepared in accordance with 4 CFR part 103 shall be forwarded to the DOJ along with any case file forwarded for further collection action or litigation as required by the Federal Claims Collections Standards.

**§§ 757.7–757.10 [Reserved]**

## Subpart B—Medical Care Recovery Act (MRCA) Claims

**§ 757.11 Scope of subpart B.**

Subpart B describes the assertion and collection of claims for medical care under the Medical Care Recovery Act (MCRA). The MCRA states that when the Federal Government provides treatment or pays for treatment of an individual who is injured or suffers a disease, the Government is authorized to recover the reasonable value of that treatment from any third party legally liable for the injury or disease.

**§ 757.12 Statutory authority.**

Medical Care Recovery Act, 42 U.S.C. 2651–2653 (1982).

[2] See footnote 1 to § 757.2.

**§ 757.13 Responsibility for MCRA action.**

(a) *JAG designees.* (1) Primary responsibility for investigating, asserting, and collecting Department of the Navy (DON) MCRA claims and properly forwarding MCRA claims to other Federal departments or agencies rests with the following officers:

(i) Commanding officers and officers in charge, Naval Legal Service Command (NLSC) activities, in their areas of geographic responsibility;

(ii) Officer in charge, U.S. Sending State Office, Rome in his area of geographic responsibility.

(2) JAG designees may assert and receive full payment on any MCRA claim. They may, however, agree to compromise or waive only claims for $40,000.00 or less. Claims in excess of $40,000.00 may be compromised or waived only with DOJ approval. Such claims will be forwarded to the Judge Advocate General in accordance with § 757.6. See § 757.7 for further discussion of waiver and compromise.

(b) *Navy Medical Treatment Facilities (MTF).* (1) Naval MTF's are responsible for ensuring potential MCRA claims are brought to the attention of the appropriate NLSC activity or U.S. Sending State Office (USSSO).

(2) The MTF reports all potential MCRA cases by forwarding a copy of the daily injury log entries and admissions records to the cognizant NLSC activity or USSSO within 7 days of treatment for which a third party may be liable. The NLSC activity or USSSO makes the determination of liability.

(i) MTF computes the value of the care it provided on NAVJAG Form 5890/12. Rates used to compute this value are published annually in the Federal Register by the Office of Management and Budget.

(ii) Block 4 of NAVJAG Form 5890/12 requires a statement from the patient describing the circumstances of the injury or disease.

(iii) An "interim" report is prepared for inpatients only. An interim report is prepared every 4 months until the patient is released, transferred or changed to an outpatient status.

(iv) A "final" report is prepared for all patients when inpatient and outpatient treatment is completed or the patient's care is transferred to another facility. A narrative summary should accompany the final report in all cases involving inpatient care. In addition, the back side of NAVJAG Form 5890/12 is completed as part of the final report when the value of Federal Government care exceeds $1,000.00.

(c) *The Office of Medical and Dental Affairs (OMA).* The office pays emergency civilian medical expenses incurred by active duty members. This office furnishes MCRA claims information to the NLSC activity or USSSO. The address is Bldg. 38H, U.S. Naval Training Center, Great Lakes, IL 60088-5200.

(d) *Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) contractors.* CHAMPUS contractors forward reports of payments in injury cases to the appropriate NLSC activity. Responsible JAG designees should, however, initiate regular contact with contractors within their geographic area to ensure all relevant cases have been reported.

(e) *Department of Justice (DOJ).* Only the DOJ may authorize compromise or waiver of an MCRA claim in excess of $40,000.00; settle an MCRA claim which was previously forwarded by the DON to DOJ for action; or settle an MCRA claim in which the third party has filed a suit against the United States or the injured person as a result of the incident which caused the injury.

**§ 757.14 Claims asserted.**

(a) *General.* The DON asserts MCRA claims when medical care is furnished to Navy and Marine Corps active duty personnel, retirees, or their dependents, and third-party tort liability for the injury or disease exists. Claims are asserted when the injured party is treated in a military MTF or when the DON is responsible for reimbursing a non-Federal care provider. Claims for medical care furnished are also asserted using alternate theories of recovery if the MCRA does not apply. See § 757.14(e).

(b) *Independent cause of action.* The MCRA creates an independent cause of action for the United States. The Government can administratively assert and litigate MCRA claims in its own name and for its own benefit. Procedural defenses, such as a failure of the injured person to properly file and/or serve a complaint on the third party, that may prevent the injured person from recovering, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the injured person. The right arises directly from the statute; the statutory reference to subrogation pertain only to one mode of enforcement. In creating an independent right in the Government, the Act prevents a release given by the injured person to a third party from affecting the Government's claim.

(c) *Liable parties.* MCRA claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitations described in § 757.15.

(d) *Reasonable value of medical care.* The reasonable value of medical care provided to an injured person is determined:

(1) By using the rates set by the Office of Management and Budget and published in the Federal Register for care provided in Federal medical care facilities; or

(2) By the actual amount paid by the Federal Government to non-Federal medical care providers.

(e) *Alternate Theories of Recovery.* Often, recovery under the MCRA is not possible because no third-party tort liability exists. For example, if a member, retiree, or dependent is driving a vehicle and is injured in a single-car accident, there is no tortfeasor. State law, including insurance, workers' compensation, and uninsured motorist coverage provisions, determines the DON's right to recover in situations not covered by the MCRA. If, under the law where the injury occurred, the injured party is entitled to compensation for medical care received, usually the Federal Government may recover. The two most common alternate theories are described below.

(1) Recovery may be possible under the injured party's automobile insurance policy. In most cases, the Federal Government should seek recovery as a third-party beneficiary under the medical payments or the underinsured/uninsured portion of the injured party's policy. The ability of the Federal Government to recover as a third-party beneficiary has been upheld in some states, while other states have taken the contrary position.

(2) Recovery may also be possible under State workers' compensation laws. Case law in this area is still emerging, but in most jurisdictions, the United States stands in the position of a lien claimant for services rendered.

**§ 757.15 Claims not asserted.**

In some cases, the MCRA or public policy considerations limit the DON's assertion of claims against apparent third-party tortfeasors. MCRA claims are not asserted against:

(a) *Federal Government agencies.* Claims are not asserted against any department, agency or instrumentality of the United States. "Agency or instrumentality" includes self-insured, non-appropriated-fund activities but does not include private associations.

(b) *Injured servicemembers, dependents and employers of the United States.* Claims are not asserted directly against a servicemember, the dependent

of a servicemember, or an employee of the United States who is injured as a result of his willful or negligent acts. The United States does assert, however, against medical care and treatment insurance coverage the member, employee, or dependent might have.

(c) *Employers of merchant seamen.* Claims are not asserted against the employer of a merchant seaman who receives Federal medical care under 42 U.S.C. 249.

(d) *Department of Veterans Affairs care for service-connected disability.* Claims are not asserted for care provided to a veteran by the Department of Veterans Affairs when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided an individual before he is transferred to a Department of Veterans Affairs hospital.

**§ 757.16 Claims asserted only with JAG approval.**

The responsible NLSC activity or USSSO will investigate potential MCRA claims against the following third parties and forward a copy of their claims file, along with recommendations on assertion, to the Judge Advocate General:

(a) *Certain Government contractors.* JAG approval is required before asserting an MCRA claim against a Federal Government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal Government for tort liability.

(b) *Foreign Governments.* JAG approval is required before asserting MCRA claims against foreign governments, their political subdivisions, Armed Forces members, or civilian employees.

(c) *U.S. personnel.* JAG approval is required before asserting MCRA claims against U.S. servicemembers, their dependents and employees of the United States, or their dependents for injury to another person.

**§ 757.17 Statute of limitations.**

(a) *Federal.* The United States, or the injured party on behalf of the United States, must file suit within 3 years after an MCRA action accrues. 28 U.S.C. 2415. Generally this is 3 years from the date of initial Federal treatment or Federal Government payment to a private care provider, whichever is first.

(b) *State.* Some State statutes of limitations may also apply where recovery is based on authority such as workers' compensation statutes, no-fault insurance statutes, no-fault medical payments, or uninsured motorist provisions of insurance contracts.

**§ 757.18 Asserting the claim.**

(a) *Initial action by JAG designee.* When advised of a potential MCRA claim, the JAG designee will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When the DON has reimbursed a non-Federal provider for health care or when CHAMPUS has made payment for a Navy health care beneficiary, the DON will assert any resulting MCRA claim.

(2) When care is provided in a Federal treatment facility, the status of the injured person will determine the agency which will assert a resulting MCRA claim.

(i) Where Navy or Marine Corps members, retirees, or their dependents receive medical treatment from another Federal agency or department, the DON will usually assert any MCRA claim on behalf of the United States based on information provided by the treating agency or department.

(ii) Similarly, where a Navy MTF provides care to personnel of another Federal agency or department, that other agency or department will usually assert any claim on behalf of the United States.

(3) If the claim is not one which the DON should assert, the JAG designee will forward all available information to the appropriate department or agency.

(4) If the claim is one which the DON should assert, the JAG designee will ensure an appropriate investigation into the circumstances underlying the claim is initiated and will provide notice to the injured party and all third parties who may be liable to the injured person and the United States under the MCRA.

(b) *Investigating the claim.* While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions. Usually the file will contain:

(1) Identification of each person involved in the incident including name, address, occupation, and nature of involvement;

(2) Police, social service, and other Federal, State and local agency reports on the incident;

(3) Completed copies of NAVJAG Form 5890/12 [3] or equivalent forms from other agencies and departments;

(4) Inpatient summaries and outpatients records of treatment of the involved injury in non-Federal facilities;

(5) Documents reflecting Federal payment for non-Federal treatment of the injured person;

(6) Calculations of the reasonable value of the Government's MCRA claim;

(7) Itemized repair bills or estimates of repair of damaged Federal Government property;

(8) Where an identified third-party tortfeasor is a uniformed servicemember or a U.S. employee, information and findings concerning that person's duty or scope of employment status at the time of the incident giving rise to the injury;

(9) Where an identified third-party tortfeasor is a uniformed servicemember or a U.S. employee or the dependent of a uniformed service member or U.S. employee, information and findings concerning whether that individual was grossly negligent or willfully culpable and whether that individual had insurance coverage at the time of the incident giving rise to the injury;

(10) Financial information on identified third-party tortfeasors including names and addresses of insurance carriers, insurance policy numbers, and extent of coverage; and

(11) A statement whether the injured person or his attorney will protect the interests of the United States.

(c) *Claims forwarded to JAG or DOJ.* In those cases where the file must be forwarded to JAG or DOJ, the file will also include:

(1) A summary of the case which includes the circumstances of the incident which caused the injury, the source, extent and value of medical care provided and a brief of the applicable law on the liability of the third party;

(2) Copies of all correspondence; and

(3) Recommended disposition.

(d) *Request for assistance in conducting investigation.* When an injury for which the DON may assert an MCRA claim occurs at a place where the DON does not have a command, unit, or activity conveniently located for conducting an inquiry into the circumstances underlying the injury, the NLSC activity or USSSO having responsibility for administering any resulting MCRA claim may request assistance from any other command, unit, or activity within the DOD. Such assistance may take the form of a complete inquiry into the circumstances underlying the incident or it may only cover part of the necessary inquiry and fact gathering. If a NLSC activity or USSSO receives a similar request from another command, unit or activity within the DOD, every effort should be made to honor the request. Assistance will normally be provided without reimbursement from the requesting service.

(e) *Notice of claim.* (1) The JAG designee will assert appropriate MCRA

[3] See footnote 3 to § 757.2.

claims by mailing, certified mail, return receipt requested, a notice of claim (SF 96) to identified third-party tortfeasors and their insurers, if known. Many insured tortfeasors fail to notify their insurance companies of incidents. This failure may be a breach of the cooperation clause in the policy and may be grounds for the insurer to refuse to defend the insured or be responsible for any liability. The United States, as a claimant, may preclude such an invocation by giving the requisite notification itself. The purpose of the insurance clause is satisified if the insurer receives actual notice of the incident, regardless of the informant. This notice should be mailed as soon as it reasonably appears an identified third party may be liable for the injuries to the injured person. It is not necessary or desirable to delay mailing this notice until the completion of the investigation convened to inquire into the circumstances underlying the incident causing the injury. The prompt assertion of the claim will ensure that the Government is named on the settlement draft. If the United States is not so named, and the claim has been asserted, the insurer settles at its own risk.

(2) The JAG designee will also notify the injured person or his legal representative of the Government's interest in the value of the medical care provided by the United States. This notice will advise that:

(i) The United States may be entitled to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(ii) The injured person is required to cooperate in the efforts of the United States to recover the reasonable value of medical care furnished or paid for by the Federal Government;

(iii) The injured person is required to furnish a statement regarding the circumstances surrounding the care and treatment;

(iv) The injured person may seek legal guidance concerning any possible claim for personal injury;

(v) The injured person is required to furnish information concerning legal action brought against any individual involved in the incident and provide the name of counsel representing the parties to such an action; and

(vi) The injured person should not execute a release or settle a claim arising from the incident causing the injury without first notifying the JAG designee.

(f) *Administering the claim.* (1) After investigating and asserting the claim, the JAG designee will maintain contact with all parties, their legal representatives, and insurers.

(2) An effort should be made to coordinate collection of the Federal Government's MCRA interest with the injured person's action to collect his own claim for damages.

(i) Attorneys representing an injured person may be authorized to include the Federal Government's MCRA claim as an item of special damages with the injured person's claim or suit.

(ii) An agreement that the Government's claim will be made a party of the injured person's action should be in writing and state that counsel fees will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the injured person is not bringing an action for damages or is refusing to include the Federal Government's MCRA interest, the JAG designee will pursue independent collection. The United States is specifically allowed to intervene or join in any action at law brought by or through the injured person against the liable third person or bring an original suit in its own name or in the name of the injured person. The JAG designee will ensure all parties are aware that the United States must be a party to all subsequent collection negotiation.

(4) When the MCRA interests are not being represented by the injured person and independent collection efforts have failed, the JAG designee will request JAG to refer the claim to the DOJ for possible suit. In such cases, the JAG designee will forward the complete file to JAG in accordance with §§ 757.18 (b) and (c).

(g) *Access to DON records and information.* (1) The medical records of the injured person will be released to the injured person or his legal representative upon request. This release will be without cost except in unusual circumstances. These records may not be released to anyone else outside the DON except in accordance with the provisions of the Privacy Act, 5 U.S.C. 552a. Usually such a release will require authorization from the injured individual or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction."

(2) In appropriate cases, military health care providers who have examined or treated the injured person may be made available by their commands to testify regarding the medical care provided to the injured person. Requests for such testimony will be processed in accordance with DOD Directive 5405.2, 28 CFR part 725, and 32 CFR part 725, except when the injured party is asserting the Federal Government's MCRA claim as part of his action for damages. In that situation, the injured person or legal representative is considered also to be a representative of the United States and the foregoing regulations are not applicable. In such a case, the JAG designee may, if appropriate, request the command of an involved military health care provider to make the provider available for testimony on behalf of the injured person.

**§ 757.19 Waiver and compromise.**

(a) *General.* A JAG designee may authorize waiver or compromise of any MCRA claim under his authority which does not exceed $40,000.00. A third party's liability for medical costs to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is more than $40,000.00 for the purpose of waiver and compromise. When the JAG designee considers waiver or compromise appropriate in a claim which exceeds $40,000.00, the claim file will be forwarded to JAG in accordance with §§ 757.18 (b) and (c).

(b) *Waiver.* The JAG designee may waive the Federal Government's MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection would cause undue hardship to the injured person. In assessing undue hardship, the following circumstances of the injured person should be considered:

(1) Permanent disability or disfigurement;

(2) Lost earning capacity;

(3) Out-of-pocket expenses;

(4) Financial status;

(5) Disability, pension and similar benefits available;

(6) Amount of settlement or award from third-party tortfeasor; and

(7) Any other factors which objectively indicate fairness requires waiver.

(c) *Compromise.* The JAG designee may, upon written request of the injured person or legal representative, compromise the Federal Government's MCRA interest using the criteria listed above.

**§ 757.20 Receipt and release.**

(a) *Payment.* The JAG designee may receive payment in part or in full for any claim for which he is responsible. Written acknowledgment of this receipt will be mailed to the party making

payment and a copy of the acknowledgement kept in the claim file.

(b) *Release.* The JAG designee will execute and deliver a release to third parties making full or compromised payment on the Federal Government's MCRA interest. A copy of the release will be kept in the claims file.

Dated: January 30, 1992.

Wayne T. Baucino,

*Lieutenant, JAGC, U.S. Naval Reserve Alternate Federal Register Liaison Officer.*

[FR Doc. 92-3322 Filed 2-11-92; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[SF-92-01]

### Safety Zone; Suisun Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a Safety Zone on the waters of Suisun Bay, at the northeastern end of Anchorage No. 26. The U.S. Navy, in conjunction with the U.S. Air Force, has requested a safety zone around ammunition-carrying barges temporarily located in Suisun Bay. These barges will be used to facilitate the transfer of ammunition between vessels anchored in San Francisco Bay and the nearby Naval Weapons Station in Concord, California. A safety zone is necessary to ensure the safety of commercial and recreational vessels which may transit the area and security personnel aboard the barges. This regulation establishes a circular area of a 250-yard radius around the barge location. Entry into this safety zone is prohibited without the permission of the Captain of the Port, San Francisco Bay, California.

**EFFECTIVE DATES:** This regulation becomes effective at 8 a.m. PST, January 17, 1992 and terminates 8 a.m. PDT, June 30, 1992, unless canceled earlier by the Captain of the Port. Any comments on this regulation must be received on or before March 20, 1992.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Marine Safety Office, San Francisco Bay, Building 14, Coast Guard Island, CA 94501, Attention: Port Safety. The comments will be available for inspection and copying at U.S. Coast Guard Marine Safety Office, San Francisco Bay, Building 14, room 128, Coast Guard Island, CA 94501. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Lorne Thomas, Coast Guard Marine Safety Office, San Francisco Bay, CA (510) 437-3073.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Following normal rulemaking procedures by publishing an NPRM and delaying its effective date would be impracticable. The request for this regulation was not received until December 20, 1991 and there was not sufficient time to publish a proposal in advance of the event for which the regulation is needed. In addition, any delay in the effective date of this regulation would be contrary to the public interest since immediate action is needed to safeguard commercial vessels, local boating traffic and boaters.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

#### Drafting Information

The drafters of this regulation are Lieutenant Lorne Thomas, Project Officer for the Captain of the Port, and Commander J.J. Jaskot, Project Attorney, Eleventh Coast Guard District Legal Office.

#### Discussion of Regulation

The Department of Defense is returning conventional ammunition from the Persian Gulf to storage facilities in the U.S. and overseas. In some locations, the ships returning this ammunition are being backloaded with reserve ammunition so that they may be prepositioned at strategic locations around the world. Two of the Air Force's selected preposition ships are the LASH (Lighter Aboard Ship) vessels AUSTRAL RAINBOW and AMERICAN KESTRAL. They carry loaded ammunition lighters (or barges) aboard and can lower the barges into the water so they can be towed to other locations. The barges from these vessels will be used to proceed to and from Naval Weapons Station Concord to offload and onload ammunitions.

The first loaded LASH vessel will arrive in January 1992 and the second LASH vessel will arrive in March 1992. Both vessels will anchor at Explosive Anchorage No. 14 in San Francisco Bay. Some of the barges from these LASH vessels will be towed in groups to the barge fleeting location at Suisun Bay. The number of tows will be kept to a minimum. The Coast Guard will escort the barges and their movements will be coordinated with the Coast Guard's Vessel Traffic Service (VTS).

In order to minimize transit distances, the U.S. Navy has created the LASH barge fleeting site within Anchorage No. 26. Naval Weapons Station Concord will be positioning five 110'×35' Navy utility barges end-to-end within the northeast corner of Anchorage No. 26 at position 38-05.68 N, 122-04.32 W. The LASH barges will then be nested along both sides of the anchored utility barges.

All of the ammunition that will be stored aboard the barges is unarmed and inherently safe. All fuses, boosters, adapters, flares and small arms will be stored ashore. Even though the barges will be located within an existing anchorage area, creating a safety zone will further protect any commercial or recreational vessels in the vicinity.

Impact on the maritime traffic of Susisun Bay will be minimal because this safety zone is located within the established Federal Anchorage No. 26 and a designated restricted area under 33 CFR 162.270. Commercial and recreational traffic will still be able to traverse Suisun Bay and remain outside of the safety zone. Vessels may also proceed to Grizzly Bay, Suisun Slough, and Montezuma Slough through Suisun Cutoff which runs between Simmons and Ryer Islands. The only identified users of Suisun Bay who may be affected by the safety zone are sturgeon fishermen. The California Department of Fish & Game advised that seasonal sturgeon fishing occurs from January to March in Suisun Bay and in the area of Anchorage No. 26. Excluding the fishermen from an area of a 250-yard radius is expected to have a minimal effect on their fishing activity. Routine operations by the Maritime Reserve fleet personnel will not be encumbered by the safety zone.

Information concerning the safety zone will be published in the Local Notice to Mariners and a Broadcast Notice to Mariners will be made requesting mariners to remain clear of the safety zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 33 CFR part 165.

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

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Final Regulation:**

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

## PART 165—[AMENDED]

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

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

2. Section 165.T1161 is added to read as follows:

**§ 165.T1161 Safety Zone: Suisun Bay, CA**

(a) *Location.* A Safety Zone is established on the waters of Suisun Bay, at the northeastern end of Anchorage No. 26. The Safety Zone is a circular area having a radius of 250 yards centered at 38–05.68 N, 122–04.32 W.

(b) *Effective Date.* This regulation is effective at 8 a.m. PST, January 17, 1992 and terminates 8 a.m. PDT, June 30, 1992, unless canceled earlier by the Captain of the Port.

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

Dated: January 16, 1992.

**J.M. MacDonald,**

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

[FR Doc. 92–3334 Filed 2–11–92; 8:45 am]

BILLING CODE 4910–14–M

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 620

## General Provisions for Domestic Fisheries

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

**ACTION:** Emergency interim rule.

**SUMMARY:** The Secretary of Commerce (Secretary) has determined that it is necessary to close a portion of the Mid-Atlantic area to all fishing. This closure is implemented due to the potential adverse environmental conditions created by the loss of 441 drums of arsenic trioxide from a cargo vessel in the area, some of which may have ruptured. This action will prevent fishermen from harvesting fish in the area and will also facilitate salvage operation designed to locate and recover the drums of arsenic trioxide.

**EFFECTIVE DATE:** February 6, 1992 through May 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin at (508) 281–9104, or One Blackburn Drive, Gloucester, MA 01930–2298.

**SUPPLEMENTARY INFORMATION:** This emergency action is taken by the Secretary in response to the January 3, 1992, loss of 441 drums of arsenic trioxide from a cargo vessel in the area defined as a rectangle bounded by four straight lines connecting the following coordinates in the order stated: (a) 38°54.0′ N. latitude, 74°12.0′ W. longitude; (b) 38°55.5′ N. latitude, 74°14.5′ W. longitude; (c) 38°50.0′ N. latitude, 74°16.0′ W. longitude; (d) 38°51.5′ N. latitude, 74°18.5′ W. longitude; and (a) 38°54.0′ N. latitude, 74°12.0′ longitude. This area is roughly 4 square miles and was identified by the U.S. Coast Guard in consultation with the Environmental Protection Agency, NOAA's Hazardous Materials Response Team, the U.S. Food and Drug Administration and officials of the States of New Jersey and Delaware. The extent of rupture of these drums is not known at this time. Arsenic Trioxide exposure could be lethal to humans and marine life. However, unlike PCBs and DDT, arsenic trioxide does not accumulate in the food chain; impacts are usually swift and severe.

The emergency action authority vested in the Secretary under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855(c) is invoked to make the closure effective immediately.

The closure prohibits all fishing in the area from February 6, 1992 through May 12, 1992. The area will reopen when the Secretary, in association with other State and Federal agencies, determines that the threat of environmental degradation of the marine environment represented by the presence of the drums of arsenic trioxide, and any potential negative impact on fishing operations, has terminated due to the search and salvage operation. If the Secretary has not made this determination before the end of this closure period, the Secretary will extend the closure of the area for a second 90-day period.

This action has the support of the Mid-Atlantic Fishery Management Council, the Food and Drug Administration, the U.S. Coast Guard, and State agencies in Delaware and New Jersey.

**Classification**

This rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act.

The reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of this emergency rule, under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act. Any delay in implementing this rule would increase the potential for risk to human health and safety and increase the likelihood of possible harm to fishery resources in the designated area.

The Assistant Administrator has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs of Delaware and New Jersey.

This emergency rule is exempt from normal review procedures of Executive Order 12291 as provided in section (8)(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator has determined that this action will not have a significant impact on endangered species consistent with the Endangered Species Act.

The Assistant Administrator has determined that this action will not have a significant impact on the marine mammal population consistent with the Marine Mammal Protection Act.

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

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

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

This action is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment. Due to the small area being closed, this action is of limited magnitude and would not have significant environmental impacts. The

underlying reason for this action makes it noncontroversial.

**List of Subjects in 50 CFR Part 620**

Fisheries.

Dated: February 6, 1992.

**Samuel W. McKeen,**

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

For the reasons set out in the preamble, 50 CFR part 620 is temporarily amended from February 6, 1992 through May 12, 1992 as follows:

## PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

1. The authority citation for part 620 continues to read as follows:

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

2. In § 620.7, a new paragraph (i) is added to read as follows:

**§ 620.7 General prohibitions.**

* * * * *

(i) Fish in the area of the Mid-Atlantic defined as a rectangle bounded by four straight lines connecting the following coordinates in the order stated: (a) 38°54.0′ N. latitude, 74°12.0′ W. longitude; (b) 38°55.5′ N. latitude, 74°14.5′ W. longitude; (c) 38°50.0′ N. latitude, 74°16.0′ W. longitude; (d) 38°51.5′ N. latitude, 74°18.5′ W. longitude; and (a) 38°54.0′ N. latitude, 74°12.0′ W. longitude.

[FR Doc. 92-3226 Filed 2-6-92; 3:55 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 57, No. 29
Wednesday, February 12, 1992

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 THE TREASURY

### Office of Thrift Supervision

### 12 CFR Chapter V

[No. 92-31]

### 90-Day Regulatory Review: Reducing the Burden of Government Regulation

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

**ACTION:** Notice of proposed rulemaking, public hearing, request for comment.

**SUMMARY:** On January 30, the President announced a 90-day regulatory review program as part of his plan to promote economic growth and reduce the burden of government regulation. In accordance with that plan, the heads of the major federal regulatory agencies have been asked to "set aside a 90-day period to review regulations and programs that may hinder economic growth, and to identify and accelerate action on initiatives that will reduce the burden of existing regulations or otherwise promote economic growth". During this 90-day review period, the federal agencies, including the Office of Thrift Supervision, have been asked to work with the public and other interested agencies to (i) identify regulations and programs that impose a substantial cost on the economy and (ii) determine whether each such regulation or program adheres to standards such as providing a net benefit to society, being cost effective and providing clarity and certainty to the regulated community.

By this action, the OTS is (1) notifying the public that hearings will be held to solicit comments from the public on these matters on March 16, 1992, in Washington DC and on March 12, 1992, in San Francisco, California, and (2) requesting written comment.

**DATES:** Comments must be received on or before March 13, 1992.

The public hearings will be held on March 12, 1992, and March 16, 1992, from 9 a.m. to 5 p.m.

**ADDRESSES:** Comments and written requests to participate in the public hearing should be sent to: Director, Information Services Division, Office of Communication, 1700 G Street, NW., Washington, DC 20552, with a copy to Sonja Rodriguez, Special Assistant to the Director, at the above address. Written requests may also be hand delivered to the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday. Requests to participate must be received no later than February 26, 1992. Comments will be available for public inspection at Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Street Level.

*Hearing Locations:* On March 12, 1992, hearings will be held at the OTS, San Francisco, Pacific Telesis Center, One Montgomery Street, suite 400, San Francisco, CA 94104.

On March 16, 1992, hearings will be held at the Office of Thrift Supervision, Second Floor Amphitheater, 1700 G Street, NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Sonja Rodriguez, Special Assistant to the Director, (202) 906-7857, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** In his State of the Union address, the President announced a comprehensive, 90-day review of federal regulations to be undertaken by all of the major federal regulatory agencies. During this time, agencies will work "to identify regulations and programs that significantly reduce jobs or otherwise impose a significant burden on the economy, * * * to propose administrative changes that will bring each of (their) existing and proposed regulations into conformity with these standards" to the extent permitted by law, and to refrain from proposing or issuing new regulations and programs that are not consistent with this program. As part of this review, each agency has been encouraged to work in part with the public. Notice is therefore given that the OTS will seek public comment on these matters during the comment period ending March 13, 1992 and will hold hearings at the OTS's offices in Washington DC on March 16, 1992, and in San Francisco on March 12, 1992. The hearings are being held in two locations in order to solicit wider participation by commenters.

Persons wishing to participate in these hearings should send a written request to participate to the address listed in the "**ADDRESSES**" portion of this document, to be received no later than 5 on February 26, 1992. Requests to participate in the hearing must include the following information: (1) The name, address, and business telephone number of the participant; (2) the entity or entities that the participant will be representing; (3) a brief summary of the participant's remarks, identifying any specific issues to be addressed; and (4) whether the participant prefers to attend the Washington or the San Francisco hearing.

Depending on the number of requests received, participants may be limited in the length of their oral presentations. The OTS will notify participants of the time scheduled for their presentation. The OTS anticipates establishing panels of participants for presentations and reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation then may be accommodated in the time available.

Participants will be required to submit written statements in advance of the hearing date. These written statements should incorporate the major points to be presented at the hearing and, if they exceed 25 doubled-spaced, typewritten pages, should be accompanied by an Executive Summary of no more than 3-5 pages. Participants attending the hearings in either Washington or San Francisco must deliver their written submissions to the address listed in the "**ADDRESSES**" portion of this document no later than 5 p.m. on March 5, 1992. Written submissions for those attending in San Francisco must also be delivered to that address (c/o Virginia Varella) no later than March 5, 1992.

Hearing participants or commenters who recommend repeal or modification of any OTS regulation should identify the regulation by citation to the Code of Federal Regulations and should provide a clear, succinct explanation of the reasons why repeal or modification is being recommended.

Dated: February 7, 1992.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**

*Deputy Director For Washington Operations.*

[FR Doc. 92-3343 Filed 2-11-92; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92-NM-03-AD]**

### Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to Aerospatiale Model SN 601 Corvette series airplanes. This proposal would require repetitive high frequency eddy current inspections of the canopy inner skin for evidence of cracks, and modification, if necessary. This proposal is prompted by the detection of a structural crack on a fatigue test airframe. This condition, if not corrected, could reduce the structural integrity of the fuselage and may cause decompression.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-03-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060, Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hank Jenkins, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-03-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-03-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

#### Discussion

The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on Aerospatiale Model SN 601 Corvette series airplanes. The DGAC advises that, during fatigue testing by the manufacturer, a structural crack was detected on the fatigue test airframe. Fatigue testing demonstrated that cracks may develop in the left-hand (LH) and/or right-hand (RH) side canopy inner skin between frame 9 and frame 10 fore to aft, and between stringer 4 and stringer 2 in circumference. This condition, if not corrected, could reduce the structural integrity of the fuselage and may cause decompression.

Aerospatiale has issued Aerospatiale Service Bulletin No. 53-26, dated January 24, 1991, which describes procedures for high frequency eddy current inspections to detect fatigue cracks of the LH and RH side canopy inner skin. Repair of identified cracking comprises the installation of Modification 1395. The DGAC has classified this service bulletin as mandatory and has issued French Airworthiness Directive No. 91-102-016(B) in order to assure the airworthiness of these airplanes in France.

Aerospatiale also has issued Service Bulletin No. 53-14, Revision 1, dated January 24, 1991, which describes Modification 1395, involving the replacement of the frame 10 fuselage forward and rear section junction reinforcements. This Modification serves as the repair necessary if fatigue cracks are found in this area. The DGAC has not classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United State, the proposed AD would require repetitive high frequency eddy current inspections of the canopy inner skin for evidence of cracks, and modification, if necessary. The actions would be required to be accomplished in accordance with the service bulletins previously described. Incorporation of Modification 1395, in accordance with Aerospatiale Service Bulletin 53-14, would constitute terminating action for the repetitive high frequency eddy current inspections.

In this action, the FAA is not proposing to mandate Modification 1395 for the following reasons:

a. The necessary inspections are easy to perform, requiring a total of 5 work hours or less for access, inspection, and closure.

b. The inspection area is easily accessible.

c. Failure of the area is not likely to be catastrophic.

It is estimated that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take

approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $275.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a sufficient economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 92-NM-03-AD.

Applicability: Model SN 601 Corvette series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in the structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 14,100 flight cycles or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection to detect cracks in the left-hand (LH) and right hand (RH) side canopy inner skins forward of Frames 10 at the height of Stringer 4, in accordance with Aerospatiale Service Bulletin 53-26, dated January 24, 1991.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,600 flight cycles.

(c) If cracks are detected as a result of the inspection required by paragraphs (a) or (b) of this AD, prior to further flight, install Modification 1395 in accordance with Aerospatiale Service Bulletin No. 53-14, Revision 1, dated January 24, 1991.

(d) Accomplishment of Modification 1395, in accordance with Aerospatiale Service Bulletin No. 53-14, Revision 1, dated January 24, 1991, constitutes terminating action for the inspections requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3349 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-280-AD]**

## Airworthiness Directives; British Aerospace Model DH/BH/HS 125 Series Airplanes, Excluding Model 125-600A, -700A, -800A, and -1000A Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model DH/BH/HS 125 series airplanes. This proposal would require eddy current inspections and, if necessary, dye penetrant inspections of certain areas of the wing upper skins to detect cracks in the vicinity of countersunk bolt holes and in internal stringers; and repair, if necessary. This proposal is prompted by recent reports of cracks in countersunk bolt holes in left and right wing upper skins and internal stringers attached to the underside of the wing upper skins. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wings.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-280-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC. Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-280-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No.

91-NM-280-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model DH/BH/HS 125 series airplanes (excluding Model 125-600A, -700A, -800A, and -1000A series airplanes). The CAA advises that there have been recent reports of fatigue cracks in countersunk bolt holes in left and right wing upper skins and internal stringers attached to the underside of the wing upper skins. This condition, if not corrected, could result in reduced structural integrity of the wings.

British Aerospace has issued Service Bulletin S.B. 57-75, dated July 30, 1991, which describes procedures for eddy current and dye penetrant inspections of areas in the vicinity of the wing upper skins for cracks around countersunk bolt holes and in internal stringers, and procedures for repair of certain fatigue cracks. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an eddy current inspection and, if necessary, a dye penetrant inspection of certain areas of the wing upper skins to detect cracks in the vicinity of countersunk bolt holes and in internal stringers, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $87,780.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—[AMENDED]**

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 91-NM-280-AD.

Applicability: Model DH/BH/HS 125 series airplanes, excluding 600A, 700A, 800A, and 1000A series airplanes; as listed in Service Bulletin SB 57-75, dated July 30, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Within 3 months after the effective date of this AD, and thereafter at intervals not to exceed 4 years or 2,200 flights, whichever occurs first, perform an eddy current inspection on specified areas of the left and right wing upper skins to detect cracks in countersunk bolt holes in the wing skins and in the internal stringers, in accordance with British Aerospace Service Bulletin S.B. 57-75, dated July 31, 1991.

(b) If cracks are discovered as a result of the eddy current inspection required by paragraph (a) of this AD, prior to further flight, perform a dye penetrant inspection, in accordance with British Aerospace Service Bulletin S.B. 57-75, dated July 31, 1991.

(c) If cracks are discovered as a result of either the eddy current inspections required by paragraph (a) if this AD, or the dye penetrant inspection required by paragraph (b) of this AD, prior to further flight, repair the crack(s) as follows:

(1) Cracks that do not exceed the limits specified in British Aerospace Service Bulletin S.B. 57-75, dated July 31, 1991, must be repaired in accordance with the procedures in the Service Bulletin.

(2) Cracks that exceed the limits specified in British Aerospace Service Bulletin S.B. 57-75, dated July 31, 1991, must be repaired in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3352 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-281-AD]**

## Airworthiness Directives; British Aerospace Viscount Model 744, 745D and 810 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD), that is applicable to certain British Aerospace Viscount Model 744, 745D and 810 series airplanes. This proposal would require visual inspection of the upper boom of a wing rib for proper fastener edge distance, and, repair or replacement of the rib boom with a new part, if necessary. This proposal is prompted by

reports of undersized end rib booms. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the engine mount attachment to the wing and wing structure.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-281-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington, Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-281-AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-281-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

## Discussion

The Civil Aviation Authority, which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Viscount Model 744, 745D and 810 series airplanes. The Civil Aviation Authority advises that cases have been reported of undersized end rib booms installed in these airplanes during incorporation of Modifications D3070 and D3292 (on Models 744 and 745D) and Modifications FG1925 and FG2172 (on Model 810). This condition, if not corrected, could result in reduced structural integrity of the engine mount attachment to the wing and wing structure.

British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 192 (for Model 810 series airplanes) and PTL 323 (for Model 744 and 745D series airplanes), both dated January 31, 1990, which describe procedures for visual inspection of the upper boom of the wing rib for proper fastener edge distance, and repair or replacement of the rib boom with a new part, if necessary. The Civil Aviation Authority has classified these service bulletins as mandatory.

These airplane models are manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require visual inspection of the upper boom of the wing rib for proper fastener edge distance, and repair or replacement of the rib boom with a new part, if necessary. The actions would be required to be accomplished in accordance with the British Aerospace PTL's described previously.

It is estimated that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $47,850.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 91-NM-281-AD.

Applicability: Viscount Model 744 and 745 series, post-mod D3070 and D3292; and Viscount Model 810 series, post-mod FG1925 and FG2172; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine mount attachment to the wing and wing structure, accomplish the following:

(a) Within 100 landings or within 4 months after the effective date of this AD, whichever occurs earlier, visually inspect the upper boom of the wing rib at wing station 257, left and right, for proper fastener edge distance, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 192 or PTL 323, both dated January 31, 1990, as applicable.

(b) If any discrepancies are detected in the fastener edge distance, prior to further flight, replace the rib boom with a new part, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3353 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 92-NM-06-AD]**

## Airworthiness Directives; British Aerospace Model 146-100A, 200A, and 300A Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model 146-100A, 200A, and 300A series airplanes. This proposal would require installation of shorter hoses at certain locations in the pitot-static system on affected airplanes. This proposal is prompted by recent reports of low spots in pitot-static system hoses that could result in water being trapped and causing the pitot-static system to malfunction. The actions specified by the proposed AD are intended to eliminate the low spots and prevent the generation of incorrect air speed and altitude information.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transportation Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-06-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC. Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4036; telephone (206)227-2113; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-06-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-06-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 146-100A, 200A, and 300A series airplanes. The CAA advises that visual inspections have resulted in the discovery of low spots in certain pitot-static hoses that could result in water being trapped in pitot-static hoses and causing malfunctioning of the pitot-static system. This condition, if not corrected, could result in incorrect air speed and altitude information being generated by the pitot-static system.

British Aerospace has issued Service Bulletin SB.34-128-00950J, dated March 22, 1991, Service Bulletin SB.34-132-46042A, dated June 24, 1991, and Service Bulletin SB.34-131-46041A, dated June 24, 1991, which describe procedures for installation of shorter hoses at certain locations in the pitot-static systems on affected airplanes. The CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certified for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the type design registered in the United States, the proposed AD would require the installation of shorter hoses at certain locations in the pitot-static system on affected airplanes. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 18 airplanes of U.S. registry would be affected by this

proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $494 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,802.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 92-NM-06-AD.

Applicabililty: Model 146-100A, 200A, and 300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the generation of incorrect air speed and altitude information due to malfunctioning of the pitot-static system, accomplish the following:

(a) For British Aerospace Model 146-200A series airplanes with Serial Numbers E2164 and subsequent; and Model 146-300A series airplanes with Serial Numbers E3118, E3163, and subsequent: Within 30 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with instructions in British Aerospace Service Bulletin SB.34-128-00950J, dated March 22, 1991:

(1) Replace existing pitot-static system hoses at specified location with shorter hoses.

(2) Check the clamp block bolts installation. If any discrepancy is detected, correct it prior to further flight.

(3) Conduct a leak test of the pitot-static system. If any discrepancy is detected, correct it prior to further flight.

(b) For British Aerospace Model 146-100A, 200A, and 300A series airplanes equipped with a True Airspeed Computer No. 1 in accordance with modification HCM40159B or HCM40297G, along with a Mode "S" Transponder in accordance with modification HCM30118B or HCM40277A: Within 90 days after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with instructions in British Aerospace Service Bulletin SB.34-131-46041A, dated June 24, 1991:

(1) Replace existing pitot-static system hoses at specified locations with shorter hoses.

(2) Conduct a leak test of the pitot-static system. If any discrepancy is detected, correct it prior to further flight.

(c) For British Aerospace Model 146-100A, 200A, and 300A series airplanes equipped with a True Airspeed Computer No. 2 in accordance with modification HCM40160C or HCM40298G, along with a Mode "S" Transponder in accordance with modification HCM30118B or HCM40277A: Within 90 days after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2) of this AD in accordance with instructions in British Aerospace Service Bulletin SB.34-132-46042A, dated June 24, 1991:

(1) Replace existing pitot-static system hoses at specified locations with shorter hoses.

(2) Conduct a leak test of the pitot-static system. If any discrepancy is detected, correct it prior to further flight.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3351 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-264-AD]**

## Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

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

**ACTION:** Notice of proposes rulemaking (NPRM).

**SUMMARY:** This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which currently requires inspections and replacement of the bolts in the aft attachment of flap beam numbers 2 through 6. This action would require a change in the size of the replacement bolts in flap beam numbers 3 through 6. This proposal is prompted by reports indicating that the existing AD inadvertently cited the incorrect dimensions for the replacement bolt in flap beam numbers 3 through 6. The actions specified by the proposed AD are intended to prevent the installation of incorrectly sized bolts, which could lead to loss of tension in the aft attachment of the flap beams.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-264-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-264-AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-264-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

## Discussion

On October 11, 1988, the FAA issued AD 88-22-08, Amendment 39-6049 (53 FR 41149, October 20, 1988), to require repetitive inspections and replacement of the bolts in the aft attachment of flap beam numbers 2 through 6. That action was prompted by the findings of damaged nut and bolt threads as a result of a routine inspection of the flap beam aft attachments. The requirements of that AD are intended to prevent rupture of the bolts located at the aft attachment of the flap beams and the wings.

Since the issuance of that AD, the FAA has received reports indicating that the requirement in AD 88-22-08 to replace the bolts on flap beam numbers 3, 4, 5, and 6 with "7/16-inch diameter bolts" contradicts the procedure described in Airbus Industrie Service Bulletin A300-57-145, Revision 3, dated February 10, 1988, which was referenced in that AD. This service bulletin states that these bolts should be replaced with "3/8-inch diameter bolts."

After further review of the replacement procedure described in the service bulletin, the FAA concurs that the bolts on flap beam numbers 3, 4, 5, and 6 must be replaced with 3/8-inch diameter bolts, rather than 7/16-inch diameter bolts, as currently required by AD 88-22-08. The installation of incorrectly sized bolts could lead to loss of tension in the aft attachment of the flap beams.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has kept the FAA totally informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 88-22-08. It would continue to require inspection and replacement of the bolts on flap beam numbers 2, 3, 4, 5, and 6, but this action would change the required size of the replacement bolts on flap beam numbers 3 through 6 to 7/16-inch diameter bolts.

To delineate the differences in the requirements for the dimensions of the bolts on flap beam number 2, this proposal has addressed, in separate paragraphs, airplanes on which Modification 3553 has been accomplished separately from airplanes on which Modification 3553 has not been accomplished. Furthermore, the requirements for flap beam number 2 and the requirements for flap beam numbers 3, 4, 5, and 6 have been addressed in separate paragraphs.

It is estimated that 77 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 78 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be nominal in cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $330,330.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6049, and by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 91-NM-264-AD. Supersedes AD 88-22-08, Amendment 39-6049.

Applicability: Model A300 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of tension in the aft attachment of flap beams, accomplish the following:

(a) Within 350 landings after December 1, 1988 (the effective date of AD 88-22-08, Amendment 39-6049), perform a detailed visual inspection of flap beam numbers 2, 3,

4, 5, and 6 aft attachment on both wings to detect damage. Repeat this inspection within 700 landings after December 1, 1988. If damaged parts are found, replace in accordance with Airbus Industrie Service Bulletin A300-57-150, Revision 1, dated September 18, 1987, or in accordance with Airbus Industrie Service Bulletin A300-57-145, Revision 3, dated February 10, 1988.

(b) For airplanes on which Modification 3553 has not been accomplished: Within 700 landings after December 1, 1988 (the effective date of AD 88-22-08, Amendment 39-6049), replace the bolts on flap beam number 2 with ⅜-inch diameter bolts in accordance with Airbus Industrie Service Bulletin A300-57-145, Revision 3, dated February 10, 1988.

(c) For airplanes on which Modification 3553 has been accomplished: Within 1,000 landings after December 1, 1988 (the effective date of AD 88-22-08, Amendment 39-6049), replace the bolts on flap beam number 2 with 7/16-inch diameter bolts in accordance with Airbus Industrie Service Bulletin A300-57-145, Revision 3, dated February 10, 1988.

(d) For all airplanes: Within 1,000 landings after the effective date of this AD, replace the bolts on flap beam numbers 3, 4, 5, and 6 with ⅜-inch diameter bolts, in accordance with Airbus Service Bulletin A300-57-145, Revision 3, dated February 10, 1988.

(e) Replacement of the flap beam bolts in accordance with Airbus Service Bulletin A300-57-145, Revision 3, dated February 10, 1988, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 28, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3355 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-250-AD]**

## Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD), that is applicable to certain Model A320 series airplanes. This proposal would require inspection, operational tests, and replacement, of the hydraulic fire shut off valve actuator. This proposal is prompted by reports of the hydraulic fire shut off valve failing to close during maintenance checks. The actions specified by the proposed AD are intended to prevent a short circuit of the hydraulic fire shut off valve actuator, which could result in the inability to isolate hydraulic fluid from an engine fire.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-250-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-250-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA,Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-250-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The French DGAC advises that, during maintenance of Model A320 series airplanes, several hydraulic fire shut off valves failed to close. Investigation revealed that the electrical motor brushes can chafe and subsequently damage the insulation on the internal cables of the actuator, running from the connector to the microswitches. This condition, if not corrected, could result in a short circuit of the hydraulic fire shut off valve actuator which could result in the inability to isolate hydraulic fluid from an engine fire.

The affected actuators have been identified and isolated to a specific batch. This actuator has been redesigned to preclude the possibility for the cable to chafe against the motor brushes. The redesigned actuator is identified by part number (P/N) "EO 1100, Amendment A" or P/N "A06 A00."

Airbus Industrie has issued All Operator Telex (AOT) 29-04, Revision 1, dated June 1, 1991, which describes procedures for inspection, operational tests, and replacement of the hydraulic fire shut off valve actuator with a redesigned actuator. The French DGAC has classified this AOT as mandatory and has issued French Airworthiness Directive 91-152-019(B) in order to assure the airworthiness of these airplanes in France.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the

applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection, operational tests, and replacement, if necessary, of the hydraulic fire shut off valve actuator. The actions would be required to be accomplished in accordance with the AOT previously described.

It is estimated that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,940.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 91-NM-250-AD.

Applicability: Model A320 series airplanes on which Modification 22155 has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit of the hydraulic fire shut off valve actuator, which could result in the inability to shut off fuel to the engine in the event of an engine fire, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, perform an inspection of the hydraulic fire shut off valve to ascertain the part number (P/N) of the actuator, in accordance with Airbus Industrie All Operator Telex (AOT) 29-04, Revision 1, dated June 1, 1991.

(b) If the actuator does not have P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": No further action is required.

(c) If the actuator has P/N "EO "1100," without Amendment designation; or P/N "EO 1100, Amendment B": Within 400 hours time-in-service after the effective date of this AD, perform an operational test of the fire shut off valve in accordance with Chapter 29-10-00, page 501, of the airplane maintenance manual.

(1) If the valve passes the operational test, repeat that operational test at intervals not to exceed 400 hours time-in-service.

(2) If the valve fails the operational test, prior to further flight, replace the actuator in accordance with Airbus Industrie All Operator Telex (AOT) 29-04, Revision 1, dated June 1, 1991.

(i) If the replacement actuator has P/N "EO 1100, Amendment A"; or P/N "EO 1100, Amendment AB"; or P/N "EO 1100, Amendment C"; or P/N "A06 A00": No further action is required.

(ii) If the replacement actuator has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": Repeat the operational test at intervals not to exceed 400 hours time-in-service.

(d) Prior to the accumulation of 3,000 hours time-in-service after the effective date of this AD, replace each actuator that has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B"; with an actuator having P/N "EO 1100, Amendment A"; or P/N "EO 1100, Amendment AB"; or P/N "EO 1100, Amendment C"; or P/N "A06 A00." Accomplishment of this replacement constitutes terminating action for the repetitive operational tests required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3356 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-278-AD]**

## Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which currently requires a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary. That action was prompted by a report of inadvertent operation of the stick shaker and stick pusher shortly after takeoff, due to a faulty static inverter. This action would require repetitive check measurements of the static inverter voltage and frequency outputs, and recalibration, if necessary. A terminating action has also been added, which, when accomplished, would eliminate the need for repetitive inspections. The actions specified by the proposed AD are intended to prevent erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-278-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected

at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-278-AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-278-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

## Discussion

On December 10, 1990, the FAA issued AD 91-01-02, Amendment 39-6846 (55 FR 52038, December 19, 1990), to require a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and 2, and recalibration, if necessary. That action was prompted by a report of inadvertent operation of the stick shaker and stick pusher shortly after take-off, due to a faulty static inverter. This difficulty was traced to a fault within the static inverter, which caused both the stick shake and stick push to operate in advance of the normal stall vane operating angle positions on one system. The requirements of that AD were intended to prevent erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane.

Since the issuance of that AD, new data indicate that the static inverter voltage and frequency outputs should be measured repetitively in order to ensure the continued airworthiness of these airplanes.

British Aerospace has issued Alert Service Bulletin 27-A-PM6005, Issue 2, dated June 17, 1991, which describes procedures for repetitive measurements of the voltage and frequency output of the static inverters, and recalibration of the static inverters, if necessary.

British Aerospace has also issued Service Bulletin SB 27-PM6005, dated June 11, 1991, which describes procedures for installation of Modification PM6005. This modification involves the addition of multiple capacitors to the existing static inverter, resulting in enhancement of the stall protection system. Once this modification is installed, the repetitive measurements of the static inverter voltage and frequency outputs are no longer necessary.

The United Kingdom Civil Aviation Authority (UK-CAA) has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the UK-CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91-01-02 to require repetitive measurements of the static inverter voltage and frequency outputs; and recalibration, if necessary. This proposal would also require operators to install Modification PM6005 as terminating action for the repetitive measurements. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is approximately $1,100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $82,775.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6846, and by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-278-AD. Supersedes AD 91-01-02, Amendment 39-6846.

Applicability: All Model BAC 1-11 200 and 400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure stall warning protection, accomplish the following:

(a) Within 600 hours time-in-service or within 120 days after January 28, 1991 (the effective date of AD 91-01-02, Amendment 39-6846), whichever occurs first, measure the voltage and frequency outputs of Static Inverters No. 1 and No. 2, in accordance with the Accomplishment Instructions in British Aerospace Alert Service Bulletin 27-A-PM6005, Issue 1, dated March 28, 1990, or Issue 2, dated June 17, 1991. If the measured voltage and/or frequency do not conform with the tolerances as detailed in the Maintenance Manual, Paragraph E, "Stall Protection—Simulated Flight Condition Check," prior to further flight, remove the inverter from the airplane and recalibrate it in accordance with the service bulletin.

(b) Repeat the measurements required by paragraph (a) of this AD at the later of the times specified in subparagraphs (b)(1) and (b)(2) of this AD:

(1) Within 600 hours time-in-service or 4 months after performing the measurement required by paragraph (a) of this AD, whichever occurs first; or

(2) Within 100 hours time-in-service after the effective date of this AD.

(c) After performing the measurements required by paragraph (b) of this AD, repeat the measurements thereafter at intervals not to exceed 600 hours time-in-service or 4 months, whichever occurs first.

(d) Within 12 months after the effective date of this AD, install Modification PM6005 in the number 1 and 2 inverters, in accordance with British Aerospace Service Bulletin SB 27-PM6005, dated June 11, 1991. Installation of Modification No. PM6005 in the number 1 and 2 inverters constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1992.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3354 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 91-NM-252-AD]**

## Airworthiness Directives; Airbus Industrie Model A300-600 and A310 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300-600 and Model A310 series airplanes. This proposal would require inspection of the forward engine mount link and the aft engine mount bean assembly to detect cracks and replacement of the link or beam assembly, if necessary. This proposal is prompted by reports indicating that the forward engine mount links may have been overheated during the machining process and the aft engine mount beam assemblies may not have been dip etched prior to fluorescent penetrant inspections. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the airplane.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-252-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

The service information referenced in the proposed rule may be obtained from Pratt and Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing data for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-252-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-252-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300-600 and Model A310 series airplanes. The French DGAC advises that, during the machining process, forward engine mount links may have been overheated, which would make the surface of the links prone to cracking. Additionally, the aft engine mount beam assemblies may not have been dip etched prior to fluorescent penetrant inspection, which would have allowed forging laps and material flaws to go undetected. This

condition, if not corrected, could result in reduced structural integrity of the airplane.

The FAA has reviewed and approved the following Pratt and Whitney Service Bulletins, each dated May 10, 1991:

a. Service Bulletins PW4NAC 71-86 and PW7R4 71-90, which describe procedures for the inspection and replacement of the forward engine mount link; and

b. Service Bulletins PW7R4 71-100 and PW4NAC 71-105, which describe procedures for the inspection and replacement of the aft engine mount beam assembly.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of the forward engine mount link and the aft engine mount bean assembly to detect cracks, and replacement of the link or beam assembly, if necessary. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,620.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 91-NM-252-AD.

*Applicability:* Model A300-B4-620, A310-221, A310-222, and A310-322 series airplanes, equipped with Pratt and Whitney JT9D-7R4D1, JT9D,7R4E1, or JT9D-7R4H1 series engines; and Model A300-B4-622, A300B4-622R, and A310-324 series airplanes, equipped with Pratt and Whitney PW 4152 or PW 4158 series engines; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) Accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD as follows: For airplanes equipped with Pratt and Whitney JT9D-7R4D1, JT9D-7R4E1, and JT9D-7R4H1 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW7R4 71-90, dated May 10, 1991, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter JT9/71-00/SS:JDS:0-12-3-1. For airplanes equipped with Pratt and Whitney PW 4152 and PW 4158 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW4NAC 71-86, dated May 10, 1991, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter 4000/71.00/SS:TJF:0-12-03-1.

(1) Prior to the accumulation of 500 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracks or a broken link in the forward engine mount thrust link, in accordance with Part 1 of the applicable service bulletin.

(i) If no crack or broken link is found, repeat the visual inspection thereafter at intervals not to exceed 1,000 landings until the requirements of paragraph (a)(2) of this AD are accomplished.

(ii) If any crack or a broken link is found as a result of the visual inspection, prior to further flight, replace the link with a serviceable part that has been inspected in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(2) At the next engine removal or within 4,000 hours time-in-service after the effective date of this AD, whichever occurs first, perform a nital etch inspection to detect cracks or a broken link in the forward engine mount thrust link, in accordance with the applicable service bulletin.

(i) If no crack is found as a result of the nital etch inspection, reinstall the link assembly in accordance with the applicable service bulletin. No further action is required.

(ii) If any crack or broken link is found as a result of the nital etch inspection, prior to further flight, replace the link with a serviceable part, in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(3) Replacement of the forward engine mount thrust link in accordance with the applicable service bulletin constitutes terminating action for the requirements of this AD.

(b) Accomplish the requirements in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD as follows: For airplanes equipped with Pratt and Whitney JT9D-7R4D1, JT9D-7R4E1, and JT9D-7R4H1 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW7R4 71-100, dated May 10, 1991, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter JT9/71-00/SS:0-12-3-1. For airplanes equipped with Pratt and Whitney PW 4152 and PW 4158 series engines, accomplish the actions in accordance with Pratt and Whitney Service Bulletin PW4NAC 71-105, dated May 10, 1991, unless previously accomplished in accordance with Pratt and Whitney All Operator Letter 4000/71-00/SS:TJF:0-12-03-1.

(1) Prior to the accumulation of 500 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracks or forging laps in the aft engine mount beam assembly, in accordance with Part 1 of the applicable service bulletin.

(i) If no crack or forging lap is found as a result of the visual inspection, repeat the visual inspection thereafter at intervals not to exceed 1,000 landings until the requirements of paragraph (b)(2) of this AD are accomplished.

(ii) If any crack is found as a result of the visual inspection, prior to further flight, perform a dip etch and a spot fluorescent penetrant inspection to confirm the findings of cracks or forging laps, in accordance with Part 2 of the applicable service bulletin. If

any finding of cracks or forging laps is confirmed, prior to further flight, replace the defective beam assembly with a serviceable part, in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (b) of this AD. As of the effective date of this AD, none of the aft beam assemblies listed in the applicable service bulletin shall be installed on any airplane.

(2) Except as provided by paragraph (b)(3) of this AD, at the next engine removal or within 4,000 hours time-in-service after the effective date of this AD, whichever occurs first, perform a dip etch and a fluorescent penetrant inspection to detect cracks or forging laps in the aft engine mount beam assembly, in accordance with Part 2 of the applicable service bulletin.

(i) If no crack or forging lap is found as a result of the dip etch and fluorescent penetrant inspection, reinstall the beam assembly in accordance with the applicable service bulletin. No further action is required.

(ii) If any crack or forging lap is found as a result of the dip etch and fluorescent penetrant inspection, prior to further flight, replace the beam assembly with a serviceable part, in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

(3) If the requirements of paragraph (b)(2) of this AD result in a dual engine removal, the dip etch and fluorescent penetrant inspection of one of the two aft engine mounts may be deferred to the next 4,000 hours time-in-service or engine removal, whichever occurs first, provided no crack or forging lap is found while accomplishing the visual inspections required by paragraph (b)(1) of this AD. If those inspections are deferred, repeat the visual inspection of the deferred aft engine mount, as required by paragraph (b)(1) of this AD, at intervals not to exceed 1,000 landings.

(4) Replacement of the aft engine mount beam assembly, in accordance with the applicable service bulletin, constitutes terminating action for the requirements of paragraph (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then sent it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3312 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 91-NM-257-AD]**

## Airworthiness Directives; Boeing Model 727 and 737 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposed the adoption of a new airworthiness directive (AD), that is applicable to all Boeing Model 727 series airplanes and certain Boeing Model 737 series airplanes. This proposal would require inspection of the input shaft in the auxiliary (standby) rudder Power Control Unit (PCU), and reporting to the FAA of units that fail the inspection test procedure outlined in this proposed AD. This proposal is prompted by a report that the input shaft of the PCU of one airplane showed evidence of galling which may have greatly increased the force necessary to move the input shaft. The action specified by the proposed AD are intended to prevent an uncommanded rudder input and reduced controllability of the airplane.

**DATES:** Comments must be received no later than April 6, 1992.

**ADDRESSES:** Send comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-257-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Frey, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone (206) 227-2673, fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rules. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-257-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NRPMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, Attention: Rules Docket No. 91-NM-257-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

On March 3, 1991, a Boeing Model 737-291 airplane was involved in an accident during an approach to the Colorado Springs, Colorado, airport. The National Transportation Safety Board (NTSB) has not yet determined the cause(s) of the accident, and an investigation of airframe, operations, and weather factors is continuing.

During the post accident examination of the rudder control components, it was noted that the input lever for the auxiliary (standby) actuator was seized to the point that it could not be moved by hand. After disassembly, the bearing and shaft displayed evidence of galling damage (metal transfer) on the unlubricated area of the parts. It has not been determined what effect, if any, the galling damage may have had on the controllability of the accident airplane. Nonetheless, excessive binding between the input shaft and bearing for the standby rudder actuator could cause an uncommanded rudder input to these airplanes, which may lead to control difficulties.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent an uncommanded rudder input and reduced controllability of the airplane.

Since the unsafe condition described is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of all Boeing Model 727 and 737 airplanes, equipped with part number (P/N) 1087-23 input shaft installed in the rudder auxiliary actuator unit, to identify airplanes on which excess force is needed to rotate the shaft lever relative to the P/N 1087-22 bearing of the auxiliary actuator unit, and replacement of defective units. The shaft and bearing are a matched pair and together are referred to as "P/N 1087-21 shaft assembly." According to the manufacturer, the maximum force to move the input lever relative to the actuator housing should not exceed 0.5 pounds. Since the extent of the galling problem is not known, the FAA is proposing to require operators to submit a report of those standby rudder actuator units that are found to require excess force to operate. Based on the reports received, the FAA may consider further rulemaking.

There are approximately 1,943 Model 727 series airplanes and 1,370 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,414 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $466,620.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket No. 91-NM-257-AD.

*Applicability:* All Model 727 series airplanes; and Model 737 series airplanes, line number 1 through line number 1370; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an uncommanded rudder input, accomplish the following:

(a) Within 4,000 flight hours after the effective date of this AD, test the standby rudder actuator for excessive actuation force using the following method:

(1) Shutoff all hydraulic power.

(2) Gain access to the standby rudder actuator.

(3) Disconnect only the input rod from the standby actuator.

(4) Using a push/pull spring scale (minimum ±10% accuracy at 1.0 pound, preferably one having a peak load memory function), push on the standby rudder actuator input lever with sufficient force to move the lever from the neutral position up to, but not touching, the aft stop. The scale must be contacting the input lever at approximately the clevis bolt centerline. While applying the load required to move the lever, the scale must be maintained at an angle perpendicular to the lever arm (not to exceed 20 degrees from perpendicular). The force required to move the input lever throughout this range of motion must not exceed one pound.

(5) Repeat this test, moving the lever arm from the aft stop position up to the forward stop but not touching. The force required to move the input lever throughout this range of motion must not exceed one pound.

(6) Repeat this test moving the lever arm from the forward stop position back to the neutral position. The force required to move the input lever throughout this range of motion must not exceed one pound.

(7) If the actuation force encountered during any of the procedures required by paragraph (a)(4), (a)(5), or (a)(6) of this AD exceeds one pound, prior to further flight, replace the standby rudder actuator with a serviceable actuator, and test in accordance with paragraph (a)(9) of this AD.

(8) If the actuation force encountered during any of the procedures required by paragraph (a)(4), (a)(5), or (a)(6) of this AD is one pound or less, prior to further flight, reconnect the input rod to the standby rudder actuator, and test in accordance with paragraph (a)(9) of this AD.

(9) Perform a functional test of the standby rudder actuator in accordance with Maintenance manual 737-100/-200, chapter 27-21-141, removal/installation; or Maintenance Manual 737-300/-400/-500, chapter 27-21-24, removal/installation; or Maintenance Manual 727, chapter 27-20-151, removal/installation.

(10) Restore the airplane to its normal condition.

(b) Within 15 days after completion of the test required by paragraph (a) of this AD, submit a report on each unit that exceeded the one pound actuation force encountered during the procedures required by paragraph (a)(7) of this AD, to the Manager, Seattle Aircraft Certification Office, ANM-100S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The report should identify the airplane, specify the forces measured, include the total number of flight hours that the airplane has accumulated, and include the serial number of the standby actuator. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on January 3, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3315 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-13-AD]**

## Airworthiness Directives; Boeing Model 747-400 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require installation of shields and tape to keep unwanted materials away from the drain mast heater elements. This proposal is prompted by reports of fires in the drain mast areas. The actions specified by the proposed AD are intended to prevent fires in the drain mast internal space.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–13–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2788; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–13–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–13–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

### Discussion

Recently, two operators of Boeing Model 747 series airplanes reported incidents of fires occurring in the drain mast areas. In one incident, the operator reported that an in-flight fire occured in the aft lower lobe cargo compartment. The fire caused structural damage to the fuselage skin, frames, and stringers. The fire also damaged the insulation blankets and the cargo ballmat.

In the other incident, the operator reported that, during a line check, a ground mechanic noted evidence of fire in the mid drain mast area of the airplane fuselage. Further investigation of this incident indicated that the wire bundle, heater tape, and insulation blankets were burnt and the floor beam web was heat damaged. No fire or overheat condition had been reported previously by the flight or ground crews.

The drain mast has a heater element in its internal space. The heater helps prevent out-flow blockage caused by frozen waste water. In both incidents described above, foreign material may have contacted the heating element in the drain mast internal space, which could have triggered the fires. This condition, if not corrected, could result in a fire in the drain mast internal space.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–38A2090, dated November 21, 1991, which describes procedures for the installation of shields over the drain masts and installation of moisture resistant and thermal insulation tape around the forward drain mast tube and heater elements on the mid and aft drain masts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of shields and tape to keep unwanted materials away from the drain mast heater elements. The actions would be required to be accomplished in accordance with the service bulletin previously described.

There are approximately 28 Model 747–400 series airplanes of the affected design in the worldwide fleet. Currently, there are no airplanes on U.S. registry that would be affected by this proposed AD. However, should an airplane be added to the U.S. registry, it would take approximately 43 work hours per airplane to accomplish the proposed actions, and the average labor rate is $55 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of the proposed AD is estimated to be $2,365 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 92-NM-13-AD.

*Applicability:* Model 747-400 series airplanes as listed in Boeing Alert Service Bulletin 747-38A2090, dated November 21, 1991, certificated in any category.

*Compliance:* Required within 12 months after the effective date of this AD, unless accomplished previously.

To prevent fires in the drain mast internal space, accomplish the following:

(a) Install shields with sealant over the mid and aft drain masts in accordance with Boeing Alert Service Bulletin 747-38A2090, dated November 21, 1991.

(b) Install moisture resistant and thermal insulation tape around the forward drain tube and heater elements on the mid and aft drain masts in accordance with Boeing Alert Service Bulletin 747-38A2090, dated November 21, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3310 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-235-AD]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which currently requires that landing gear brake wear limits be incoroporated into the FAA-approved maintenance inspection program. This action would require the inspection of certain additional landing gear brakes, which were not listed in the existing rule, for wear, replacement of the brakes if the wear limits prescribed this proposal are not met, and the incorporation of new maximum wear limits into the FAA-approved maintenance inspection program. This proposal is prompted by the determination of the allowable brake wear limits for the additional brakes. The actions specified by the proposed AD are intended to prevent the loss of braking effectiveness of the landing gear brakes.

**DATES:** Comments must be received no later than April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-235-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124, and BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David M. Herron, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, telephone (206) 227-2672, fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-235-AD." The postcard will be date stamped and returned to the commenter.

### Availabilty of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, Attention: Rule Docket No. 91-NM-235-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

### Discussion

On September 26, 1991, the FAA issued AD 91-18-09, Amendment 39-8012 (56 FR 51156, October 10, 1991), to require that maximum wear limits for landing gear brakes on Model 757 series airplanes be incorporated into operators' FAA-approved maintenance inspection programs. That action was prompted by an accident in which a transport airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that 8 out of 10 brakes on the airplane were unable to absorb the required RTO energy, thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO.

Since issuance of that AD, additional brakes, not included in the existing rule, have been evaluated and their maximum allowable brake wear limits have been determined in accordance with the methodology approved by the FAA. The FAA has determined that airplanes equipped with these brakes are currently subject to the same unsafe condition addressed in the existing AD, and that new maximum brake wear limits must be applied to these brake configurations in order to ensure braking effectiveness.

The FAA has reviewed and approved BFGoodrich Service Bulletin 2-1457-32-13, dated January 30, 1991, which describes methods for adjusting currently recommended brake wear limits to account for the decreases determined in accordance with the methodology for determining allowable wear accepted by the FAA. The service bulletin also provides instructions for overhauling brakes for future use to comply with the allowable wear limits

proposed within this rule for these brakes.

An option to extend the maximum allowable brake wear limit for the BFGoodrich 2-1510 carbon brake from 1.7 inches to 2.2 inches is also provided for in this proposal. This brake has demonstrated a capability to absorb the maximum energy developed during a refused takeoff at an allowable brake wear limit of 2.4 inches. The option proposed for this amendment is established at a lesser limit than that demonstrated for energy purposes for other reasons. This proposed limit may be extended further when in-service experience demonstrates it is appropriate.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of braking effectiveness of the landing gear brakes.

Since the unsafe condition described is likely to exist or develop on other products of this same type design, equipped with the addressed brake configurations, the proposed AD would supersede AD 91-18-09 with a new airworthiness directive to require the inspection of certain additional landing gear brakes, for wear, their replacement if the wear limits prescribed in this proposal are not met, and the incorporation of these new wear limits into the FAA-approved maintenance inspection program.

There are approximately 305 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 217 airplanes of U.S. registry and 8 operators would be affected by this AD; 106 airplanes would be added by this action. For 106 airplanes of U.S. registry, it would take approximately 21 work hours per airplane to accomplish the required actions, and the average labor cost would be $55 per work hour. In addition, it is estimated that the cost of parts to accomplish the change in wear limits to these 106 airplanes (cost resulting from the requirement to change brakes before they are worn to their previously recommended limits for a one-time change) is estimated to be $3,350 per airplane. Further, it is estimated that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the proposed requirements into an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $486,330.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39-8012 and by adding the following new airworthiness directive:

**Boeing:** Docket No. 91-NM-235-AD. Supersedes AD 91-18-09, Amendment 39-8012.

*Applicability:* Model 757 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) and (c) of this AD, certificated in any category.

Compliance required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8012, AD 91-18-09), incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program.

| Brake mfr. | Brake P/N | Boeing P/N | Max. wear limit (inches) |
|---|---|---|---|
| Dunlop | AHA 1301 | S160N020-1 | 2.46 |
| Dunlop | AHA 1637 | S160N020-5 | 2.46 |
| Dunlop | AHA 1676 | S160N020-7 | 2.46 |
| Dunlop | AHA 1693 | S160N020-8 | 2.46 |
| Dunlop | AHA 1884 | S160N020-14 | 2.80 |
| BFGoodrich | 2-1510 | S160N020-11 | 1.70 |

(b) For BFGoodrich brake P/N 2-1510 (Boeing P/N S160N020-11), in lieu of the limit specified in paragraph (a) of this AD, the maximum allowable brake wear may be extended to 2.2 inches when it is placed into the FAA-approved maintenance inspection program.

(c) Within 180 days after the effective date of this AD, accomplish the following:

(1) For airplanes equipped with BFGoodrich Brake P/N's 2-1457 and 2-1457-1, (Boeing P/N S160N010-43 AND S160N010-45): Accomplish the procedures specified in Section 2.B.(1) of BFGoodrich Service Bulletin 2-1457-32-13, dated January 30, 1991. Brakes found worn more than the 1.4 inch allowable brake wear, must be removed and replaced, prior to further flight, with either a brake built in accordance with Section 2.B.(1)c. of the service bulletin, or a brake with more than 1.4 inches of allowable wear remaining.

(2) For airplanes equipped with BFGoodrich Brake P/N's 2-1457, 2-1457-1, and 2-1457-2, (Boeing P/N S160N010-43, S160N010-45, and S160N010-46): Incorporate either Figure 1 and/or Figure 2 of Section 2.B.(1)c. of BFGoodrich Service Bulletin 2-1457-32-13, dated January 30, 1991, into the FAA-approved maintenance inspection program.

(d) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on January 3, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.*

[FR Doc. 92-3314 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-166-AD]**

## Airworthiness Directives; British Aerospace Model ATP Series Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This notice revises an earlier proposed airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would have required the installation of modified earthing arrangements to the pitot static and stall warning systems and overhead stowage units, modification of the roof and sidewall light wiring, and a standby compass check. That proposal was prompted by reports of standby compass deviations exceeding the required tolerance when certain airplane electrical equipment is operated. This action revises the proposed rule by adding a requirement for installation of a warning placard. The actions specified by this proposed AD are intended to prevent inaccurate navigation when using the standby compass.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. Comment may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-166-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 21, 1991 (56 FR 52490). That NPRM would have required installation of modified earthing arrangements to the pitot static and stall warning systems and overhead stowage units, and modification of the roof and sidewall light wiring. That NPRM was prompted by reports of standby compass deviations exceeding the ±10 degree type design tolerance when certain airplane electrical equipment is operated. The excessive deviation of the standby compass is caused by electromagnetic fields associated with the operation of certain electrical equipment installed on the airplane. That condition, if not corrected, could have resulted in inaccurate navigation when using the standby compass.

Since the issuance of that NPRM, one commenter has requested that, due to the known potential for inaccurate navigation, the AD include a requirement for installation of a placard to warn the flight crew of the potential non-reliability of the standby compass when operating certain airplane electrical equipment. The placard could be removed upon accomplishment of each of the modifications required by the proposed AD. The FAA concurs that such a placard would be advantageous in alerting the flight crew to the potential unsafe condition and may serve to assure safety in the interim. This requirement has been added to the proposed rule.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

It is estimated that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 229 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,523 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $112,944.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation repared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 91-NM-166-AD.

Applicability: Model ATP series airplanes; as listed in British Aerospace Service Bulletins ATP-24-34, dated April 25, 1991, and ATP-33-8, Revision 2, dated April 11, 1991; certified in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inaccurate navigation when using the standby compass, accomplish the following:

(a) Within 14 days after the effective date of this AD, fabricate and install a temporary placard near the standby magnetic compass, worded as follows:

"WARNING: OPERATION OF CABIN ROOF AND SIDEWALL LIGHTING, PITOT HEAT, AND STALL WARNING SYSTEMS MAY INDUCE EXCESSIVE ERROR IN THE MAGNETIC COMPASS READINGS."

(b) Within 8 months after the effective date of this AD, accomplish the following:

(1) Modify the earthing arrangements to the pilot static and stall warning systems (Modification 10194A) and to the overhead stowage units (Modification 10194B), as applicable, in accordance with British Aerospace Service Bulletin ATP 24-34, dated April 25, 1991.

(2) Modify the roof and sidewall light wiring (Modification 35113A) in accordance with British Aerospace Service Bulletin ATP-33-8, Revision 2, dated April 11, 1991.

(3) Accomplish a compass swing of the standby compass in accordance with British Aerospace Service Bulletin ATP-24-34, dated April 25, 1991.

(4) Remove the temporary placard installed in accordance with paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3311 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-277-AD]**

## Airworthiness Directives; British Aerospace Viscount Model 744, 745D and 810 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Viscount Model 744, 745D, and 810 airplanes. This proposal would require initial and repeated inspections of the rear pressure bulkhead, using both visual and non-destructive test methods, and, if necessary, repair of damaged parts. This proposal is prompted by reports of corrosion found on the rear pressure bulkhead. The actions specified by the proposed AD are intended to prevent structural failure of the bulkhead and associated decompression of the passenger cabin.

**DATES:** Comments must be received by April 6, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-277-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rule Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-277-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-277-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

## Discussion

The Civil Aviation Authority, which is the airworthiness authority of the United Kingdom, recently notified the FAA that unsafe condition may exist on all British Aerospace Viscount Model 744, 745D and 810 series airplanes. The Civil Aviation Authority advises that cases have been reported of corrosion found on the fuselage rear pressure bulkhead. If uncorrected, this condition could result in structural failure of the bulkhead and associated decompression of the passenger cabin.

British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 195 (Model 810 series airplanes), dated December 12, 1990, and PTL 325 (Model 744 and 745D series airplanes, dated June 11, 1991, which describe procedures for visual and non-destructive test inspections of the rear pressure bulkhead, and, if necessary, repair of corroded, cracked, or other damaged parts. The Civil Aviation Authority has classified this service bulletin as mandatory.

These airplane models are manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require initial and repetitive inspections of the rear pressure bulkhead, using both visual and specified non-destructive test methods, and repair of damaged parts, if necessary. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 100 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $159,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—[AMENDED]

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

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 91-NM-277-AD.

*Applicability:* All Viscount Model 744, 745D and 810 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent structural failure of the bulkhead and associated decompression of the passenger cabin, accomplish the following:

(a) Within 90 days after the effective date of this AD, using both visual and specified non-destructive test methods, inspect the rear pressure bulkhead for corrosion, cracks, and damage, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195 (for Model 810 series airplanes), dated December 12, 1990; or PTL 325 (for Model 744 and 745D series airplanes), dated June 11, 1991; as applicable.

(b) Repeat the visual and non-destructive test inspections required by paragraph (a) of this AD at the following intervals:

(1) For "Part One: Rear pressure Bulkhead—Rear Face," as specified in the applicable service bulletin: At intervals not to exceed 500 landings or 6 months, whichever occurs first.

(2) For "Part Two: Rear Pressure Bulkhead Web Lap-Joints," as specified in the applicable service bulletin: At intervals not to exceed 1,600 landings or 2 years, whichever occurs first.

(3) For "Part Three: Rear Pressure Rear Face, Boundary Member, Adjacent Skin and Structure," as specified in the applicable service bulletin: At intervals not to exceed 2,500 landings or 3 years, whichever occurs first.

(4) For "Part Four: Rear Pressure Bulkhead Forward Face including Boundary Member and Adjacent Skin," as specified in the applicable service bulletin: At intervals not to exceed 4,800 landings or 6 years, whichever occurs first.

(5) For "Part Five: Rear Pressure Bulkhead Forward Face," as specified in the applicable service bulletin: At intervals not to exceed 500 landings or 6 months, whichever occurs first.

(c) If corroded, cracked, or damaged parts are found as a result of inspections required by paragraphs (a) and (b) of this AD, prior to further flight, repair in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, dated December 21, 1990; or PTL 325, dated June 11, 1991; as applicable.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-3313 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[FI-90-91]**

**RIN 1545-AQ19**

## Transferred Proceeds Allocations and Other Arbitrage Restrictions on Refunding Issues

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to arbitrage restrictions applicable to tax exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Act of 1988, and the Revenue Reconciliation Act of 1990. The proposed regulations affect issuers of tax exempt bonds and provide guidance on transferred proceeds allocations and other restrictions on refunding issues for purposes of arbitrage yield restrictions, the arbitrage rebate requirement, and advance refunding limitations.

**DATES:** Written comments must be received by April 13, 1992. However, for those wishing to participate at the hearing, written comments, requests to speak, and outlines of oral comments should be received by March 20, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

**ADDRESSES:** Send comments, requests to appear at the public hearing, and outlines of comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-90-91), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, William P. Cejudo, 202-566-3283 (not a toll-free number). Concerning the public hearing, Carol Savage of the Regulations Unit, 202-566-3935 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in proposed § 1.148-11(k)(2), which provides for an election that requires the preparation and maintenance of a written statement. The taxpayers affected are states and political subdivisions that issue bonds and entities that issue bonds on behalf of states or political subdivisions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual recordkeeping burden: 3000 hours.

The estimated average annual burden per recordkeeper is 1 hour.

Estimated number of recordkeepers: 3000.

### Background

This document proposes to amend the Income Tax Regulations (26 CFR part 1) to provide guidance on allocations of transferred proceeds and other restrictions on refunding issues for purposes of arbitrage yield restrictions under section 148, the arbitrage rebate requirement under section 148(f), and the advance refunding limitations under section 149(d) of the Internal Revenue Code. The proposed regulations propose to amend the provisions of § 1.103-14(e) of the Income Tax Regulations, as superseded in part by the temporary regulations §§ 1.148-0T through 1.148-8T published in the **Federal Register** for May 15, 1989 (54 FR 20787), and modified by temporary regulations published in the **Federal Register** for April 25, 1991 (56 FR 19045).

### Explanation of Provisions

*I. Introduction and History*

A. General Introduction

The use of proceeds of an issue of tax exempt bonds to refinance or refund another issue raises considerations involving arbitrage yield restrictions under section 148, the arbitrage rebate requirement under section 148(f), and the advance refunding limitations under section 149(d). The proposed regulations provide rules on refunding issues, including certain taxable issues in a series of refundings. They provide guidance concerning the extent to which unspent proceeds of a prior issue become "transferred proceeds" of a refunding issue. The proposed regulations also provide guidance concerning allocation of gross proceeds, investments, and bonds in refunding issues for various purposes.

The proposed regulations simplify transferred proceeds computations, clarify the definition of a refunding issue, and provide flexible allocation rules for multipurpose issues involving refundings.

*B. History of Regulation of Transferred Proceeds*

1. 1979 Regulations

On May 31, 1979, final regulations were published under the predecessor of section 148 at § 1.103-14(e) (the "1979 regulations"). For approximately 10 years, those regulations governed refunding issues for arbitrage yield restriction purposes. The 1979 regulations used a "principal-to-principal" allocation method for transferred proceeds. This principal-to-principal method required proportionate transfers of unspent proceeds of a prior issue to a refunding issue based on the percentage of the outstanding principal amount of the prior issue paid with proceeds of the refunding issue.

2. 1989 Temporary Regulations

On May 15, 1989, temporary regulations were published under section 148 at § 1.148-0T through § 1.148-9T (the "1989 temporary regulations"). These regulations generally implemented the arbitrage rebate requirement of section 148(f). Section 1.1484-T(e) of the 1989 temporary regulations significantly changed the rules on refunding issues for all purposes of section 148 and largely superseded the 1979 regulations. The 1989 temporary regulations replaced the principal-to-principal transfer method with a general "dollar-for-dollar" payment of debt service method. This dollar-for-dollar method requires transfers whenever proceeds of a refunding issue are used to pay any debt service, whether principal or interest, on a prior issue. The dollar-for-dollar method is limited by a "transfer cap," which limits the aggregate value of investments that may be allocated to the refunding portion of an issue to the value of the bonds allocated to that portion of the issue on a transfer date. In addition, the 1989 temporary regulations did not provide any significant operating rules to separate a multipurpose issue into refunding and nonrefunding portions.

The dollar-for-dollar transfer method of the 1989 temporary regulations has

been criticized because it increases the frequency of transferred proceeds computations and accelerates transfers. Some commentators recommended reinstatement of the 1979 regulations with appropriate modifications.

*II. Description of Proposed Regulations*

A. Introduction and Scope of Application

The proposed regulations generally reinstate the principal-to-principal transfer method of the 1979 regulations and incorporate concepts from both the 1979 regulations and the 1989 temporary regulations.

Subject to certain exceptions, the proposed regulations apply for all purposes of section 148 and section 149(d). Under one exception, the proposed regulations do not apply to determine whether two or more obligations are part of the same "issue" for arbitrage yield computation purposes. In addition, subject to an anti-abuse rule, the proposed regulations do not apply to limit the number of taxable advance refunding issues.

B. Definition of Refunding Issue

The proposed regulations provide a more comprehensive definition of a refunding issue than did either the 1979 regulations or the 1989 temporary regulations. Under the proposed regulations, a refunding issue generally includes any issue the gross proceeds of which are used to pay debt service on another issue. The proposed regulations provide that an issue is not a refunding issue to the extent that the obligor of one issue is neither the obligor of the other issue nor a party related to the obligor of the other issue.

Unlike prior definitions, the definition of a refunding issue in the proposed regulations focuses on the conduit borrower in a conduit financing. Thus, for purposes of determining whether an issue is a refunding issue, the conduit borrower is treated as the obligor of the issue. A refinancing of a conduit loan is treated as a refunding of the conduit loan. In addition, a refinancing of a conduit loan may also be treated as a refunding of the original issue that financed the conduit loan or another issue unless, within a limited period of time, the issuer of the original issue "recycles" or re-lends the amounts received when the conduit loan is paid off.

Under the proposed regulations, in the absence of other applicable controlling rules, the determination of whether an issue is a refunding issue is based on the substance of the transaction. In general, the proposed regulations do not permit an issue to be treated as a refunding issue if the proceeds of the issue are used to reimburse amounts that were used to pay debt service on another issue that was discharged previously. In limited circumstances, however, treatment of such an issue as a refunding issue might result from the application of the provision in the proposed regulations that focuses on the substance of a transaction. The proposed regulations do not define a "refunding issue" for other purposes of the tax exempt bond rules under section 103 and sections 141 to 150.

The Service solicits comments on all aspects of the definition of a refunding issue. Comment is solicited particularly on the approach taken towards so-called "conduit" or "pooled" financing issues under this definition. In addition, comment is solicited on whether the proposed definition of a refunding issue should be extended to any other purposes of section 103 and sections 141 to 150 either in the proposed form or with specified modifications.

C. Certain Other Definitions

1. *Definition of obligation.* For purposes of defining a refunding issue or prior issue of "obligations," the proposed regulations generally include as obligations both tax exempt and taxable evidences of indebtedness. Taxable obligations are included to accomplish proper tracing of transferred proceeds through a series of refundings that includes taxable issues.

2. *Definition of replacement proceeds of a refunding issue.* The proposed regulations contain two rules that supplement the definition of "replacement proceeds" in the case of a refunding. Under one rule, replacement proceeds of a refunding issue include certain amounts that, as a result of the refunding, cease to be replacement proceeds of the prior issue and that are not spent for a governmental purpose within six months after the date of issue of the refunding issue. Thus, issuers are required to take certain existing funds associated with a prior issue into account in determining the necessary amount of the refunding issue.

Under the second rule, the proposed regulations also treat as replacement proceeds of a refunding issue certain amounts that arise after the date of the refunding issue as a result of the refunding and that are used to pay debt service on any other issue.

D. *Principal-to-Principal Allocation Method for Transferred Proceeds*

Under the proposed principal-to-principal transfer method, transfers of unspent proceeds from a prior issue to a refunding issue are based on the portion of the outstanding principal amount of the prior issue paid with gross proceeds of the refunding issue on any date. Unspent proceeds of a prior issue covered by this rule may include, for example, proceeds in a construction fund, a reserve fund, or an escrow fund created as a result of a previous refunding. If a bond has more than de minimis original issue discount or premium, the proposed regulations treat the present value of the bond as its principal amount.

This principal-to-principal transfer method was adopted because the principal amount of a debt that is refunded is generally a reasonable measure of the portion of the prior issue that is replaced by a refunding issue. In addition, by limiting transfers to principal payment dates, this method significantly reduces the number of transferred proceeds computations.

E. Other Special Allegation Rules for Refundings

1. *Allocations of investments to transferred proceeds.* Once proceeds of a prior issue become transferred proceeds of a refunding issue, it is necessary to identify which specific investments of proceeds of the prior issue transfer to the refunding issue.

The proposed regulations provide rules for allocating investments to transferred proceeds. In the case of investments of proceeds of a prior issue that are held in a refunding escrow fund for another issue, a ratable portion of each investment must be allocated to transferred proceeds. In the case of those investments that are not held in a refunding escrow fund for another issue, either a ratable portion of each investment or a representative portion of the investment portfolio must be allocated to transferred proceeds.

2. *Special allocation rule for mixed escrows.* The proposed regulations contain a special allocation rule for "mixed escrows." A mixed escrow is a refunding escrow fund that contains both gross proceeds of a refunding issue and non-proceeds. The special allocation rule generally requires allocations of gross proceeds to expenditures for debt service on the prior issue in a manner that ensures that disproportionately large amounts of gross proceeds are not allocated to these expenditures. The proposed regulations also contain a related special allocation rule for certain short-term funds. These rules address in part the section 149(d)(4) prohibition against abusive "devices" in refundings. These rules are intended to address certain potential

abuses associated with structuring a refunding escrow fund to take inappropriate advantage of the higher permitted yield on amounts that are not gross proceeds of the refunding issue (so-called "flip-flops").

3. *Restrictions on escrow restructurings.* The proposed regulations contain an anti-abuse rule that restricts the ability of issuers to liquidate an existing refunding escrow fund and to refinance that escrow fund with proceeds of another refunding issue to avoid the impact of transferred proceeds allocations.

F. Temporary Periods for Unrestricted Investments in Refundings

The temporary periods available for investment of proceeds of refunding issues at unrestricted yields under the 1979 regulations were numerous and complex. The proposed regulations simplify these prescribed temporary periods. Under the proposed regulations, the general temporary period for refunding issues is the 30-day period beginning on the date of issue. The proposed regulations also contain certain special temporary period rules for transferred proceeds, investment proceeds, accrued interest, and costs of issuance.

G. Minor Portions in Refundings

Prior to the Tax Reform Act of 1986, a minor portion of the proceeds of an issue, generally defined by regulation to include up to 15 percent of those proceeds, could be invested at unrestricted yields. Section 148(e), enacted in 1986, significantly reduced the permitted minor portion to the lesser of (a) $100,000, or (b) 5 percent of the proceeds of an issue. The proposed regulations allow this minor portion for both the refunding issue and the prior issue. The proposed regulations clarify that, for this purpose, "proceeds of the issue" means sale proceeds (as defined in § 1.148–8T(d)(4)).

H. Reasonably Required Reserve and Replacement Funds in Refundings

Both the 1979 regulations and the 1989 temporary regulations contain detailed rules with respect to reasonably required reserve and replacement funds for refunding issues and prior issues. Under section 148(d), the amount of proceeds of an issue that may be invested at unrestricted yields in a reasonably required reserve or replacement fund is generally limited to 10 percent of the proceeds of the issue. In addition, under section 148(f), most reasonably required reserve or replacement funds are subject to the arbitrage rebate requirement. Thus, the proposed regulations simplify the rules governing reasonably required reserve and replacement funds in refundings.

The proposed regulations generally permit proceeds of a refunding issue to be invested in the amount prescribed by section 148(d) in a reasonably required reserve or replacement fund for the refunding issue. Proceeds invested in the reserve or replacement fund for the refunding issue, however, may not be used to pay debt service on the prior issue. In addition, under a new overall limitation effective as of the date of issue of a refunding issue, the aggregate amount that may be invested in higher-yielding investments in reasonably required reserve or replacement funds for both the refunding issue and the prior issue is limited to 10 percent of sale proceeds of the refunding issue.

I. Payment of Transferred Proceeds Penalty in a Current Refunding

In an advance refunding, proceeds of a prior issue that "transfer" and become transferred proceeds of a refunding issue often had been invested previously in an irrevocable, yield-restricted, refunding escrow fund to defease another issue that was refunded by the prior issue. In an advance refunding, since the yield on the transferred proceeds in the escrow fund cannot be adjusted, the issuer generally complies with the requirement to reduce the yield on transferred proceeds by reducing the yield on the refunding escrow fund financed by the refunding issue. In a current refunding, however, there is no refunding escrow fund. Under the 1989 temporary regulations, an issuer could accomplish the required yield reduction by creating a sinking fund for the refunding issue and limiting the yield on investments in the sinking fund to a lower restricted yield. The proposed regulations permit an issuer to reduce the yield on certain transferred proceeds in a current refunding by making a payment to the Internal Revenue Service.

J. Multipurpose Issue Allocations

The proposed regulations contain new, flexible allocation rules for multipurpose issues. The primary purpose of these rules is to facilitate the division of multipurpose issues involving refundings into separate issues for purposes of computing transferred proceeds and properly allocating gross proceeds, investments, and bonds. Subject to various special rules, the proposed regulations permit gross proceeds, investments, and bonds of a multipurpose issue to be allocated among the separate governmental purposes of the issue using any reasonable, consistently applied allocation method.

The proposed allocation rules for multipurpose issues contain certain restrictions on allocating bonds to the refunding portion of the multipurpose issue to prevent artificial allocations of the earliest maturities to that portion. Such an allocation would maximize the ability to advance refund the nonrefunding portion under section 149.

The proposed allocation rules for multipurpose issues apply only to the extent that these allocations affect allocations with respect to the refunding purposes of a multipurpose issue. The Service solicits comments on whether these allocation rules should be extended to other purposes of sections 103 and 141–150 either in the proposed form or with specified modifications.

K. Certain Changes to Other Regulations

1. *Ruling required for gross refundings.* A gross refunding is a refunding in which investment earnings on the proceeds of the refunding issue are not taken into account in determining the size of the refunding issue. The 1979 regulations contained numerous special rules for gross refundings. Since gross refundings are rarely done in modern transactions, the proposed regulations do not contain specific rules for gross refundings. The proposed regulations, however, do permit an issuer to seek a ruling with respect to a gross refunding. In determining whether to grant a ruling, the Service may consider the provisions on gross refundings that were part of the 1979 regulations.

2. *Certain definitional changes.* The proposed regulations include a definition of "replacement proceeds" in § 1.148–8 that is intended to cover amounts treated as proceeds under the replacement language of section 148(a)(2). This proposed definition does not define replacement comprehensively, but merely adopts appropriate terminology in lieu of the phrase "reserve or replacement fund," which was undefined and used in the 1989 temporary regulations to refer to this category of proceeds.

In addition, the proposed regulations include a revised definition of "proceeds" in § 1.148–8. This revised definition removes from the scope of "proceeds" the category of "discount proceeds," which was undefined in the 1989 temporary regulations. The intent of this deletion is to recognize that proceeds associated with the original issue discount component of bonds properly are a part of replacement proceeds. The proposed regulations also

contain some conforming definitional changes to § 1.148–8T. References in the proposed regulations to definitions in § 1.148–8T are intended to include any proposed changes to those definitions made by these regulations.

**Effective Date**

The regulations are proposed to apply to bonds issued after [the date that is 30 days after publication of final regulations in the **Federal Register**].

If an allocation of any multipurpose refunding issue or multipurpose prior issue would affect allocations of any refunding issue that is issued on or after [the date of publication of the proposed regulations in the **Federal Register**], and before the general effective date of the proposed regulations, then the issuer may elect to apply the allocation rule for multipurpose issues for purposes of making that allocation.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

See the notice of public hearing on these proposed regulations published elsewhere in this issue of the **Federal Register**.

**Drafting Information**

The principal authors of these proposed regulations are John J. Cross III, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, and David A. Walton, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR 1.101–1 through 1.150–1T**

Bonds, Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**Note:** The section numbers cited in the instructional paragraphs below as proposed sections reflect the section numbers as they would appear in the final rule (example: § 1.148–1). They do not reflect the "T" suffix currently found in the temporary rule version (example: § 1.148–1T).

## PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority for part 1 continues to read in part:

**Authority:** Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.148–0 through 1.148–9 also issued under 26 U.S.C. 148(f) and (i). * * *

**Par. 2.** Paragraph (e) of § 1.103–14 is removed.

**Par. 3.** Paragraph (c) of § 1.103–15 is revised to read as follows:

**§ 1.103–15 Excess proceeds.**

* * * * *

(c) *First exception: gross refunding with a prior ruling.* This section does not apply to a gross refunding if, prior to the date of issue of any refunding issue that is part of the gross refunding, the Internal Revenue Service gives the issuer a ruling in accordance with paragraph (e) of this section.

* * * * *

**Par. 4.** Proposed § 1.148–0 published May 15, 1989 (54 FR 20861) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice of proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing temporary regulations published the same day (56 FR 19023), is amended as follows:

1. The introductory text of paragraph (d) of § 1.148–0 is revised as set forth below.

2. In § 1.148–0, paragraph (d), the entries for § 1.148–8 heading and § 1.148–8(d)(7) are revised and new entries for § 1.148–11 are added to read as set forth below.

**§ 1.148–0 Scope and effective date of restrictions on arbitrage.**

* * * * *

(d) *List of subjects.* This paragraph (d) lists the captioned paragraphs contained in the temporary and final regulations in §§ 1.148–1 through 1.148–11.

* * * * *

*§ 1.148–8 Definitions and special rules relating to required rebate.*

* * * * *

(d) * * *

(7) Replacement proceeds.

* * * * *

*§ 1.148–11 Arbitrage rules for refunding issues.*

(a) Scope of application.
  (1) In general.
  (2) Limitations on application for purposes of section 148.
  (i) Arbitrage yield on a particular issue.
  (ii) Arbitrage rebate on a particular issue.
  (3) Limitations on application for purposes of section 149(d) restriction on the number of advance refundings.
  (4) Certain taxable advance refundings taken into account under section 149(d).
  (i) In general.
  (ii) Series of refundings.
  (iii) Example.
Definitions of refunding issue and prior issue.
  (1) Refunding issue.
  (2) Exceptions and special rules.
  (i) Payment of certain interest.
  (ii) Certain issues with different obligors.
  (iii) Certain repayments of debt to related parties.
  (iv) Certain special rules for purpose investments.
  (v) Substance of transaction controls.
  (3) Current refunding issue.
  (4) Advance refunding issue.
  (5) Prior issue.
  (6) Unrefunded amount remains eligible for future advance refunding.
(c) Other definitions.
  (1) Debt service.
  (2) Gross proceeds of a refunding issue.
  (i) In general.
  (ii) Certain released amounts.
  (iii) Certain after arising amounts.
  (iv) Examples.
  (3) Multipurpose issue.
  (4) Obligation.
  (5) Principal amount.
  (i) Bonds issued at a discount.
  (ii) Bonds issued at a premium.
  (6) Proceeds.
  (7) Purpose investment.
  (8) Refunding escrow fund.
  (9) Sale proceeds.
  (10) Transferred proceeds.
(d) Transferred proceeds allocation rule.
  (1) In general.
  (2) Application of transferred proceeds rule before universal cap rule.
(e) Special allocation rules for refunding issues.
  (1) Allocations of investments to transferred proceeds.
  (i) In general.
  (ii) Ratable allocation method.
  (iii) Representative allocation method.
  (2) Allocations of mixed escrows to investments and expenditures for debt service on a prior issue.
  (i) In general.

(ii) Special rule for certain short-term funds.
(3) Restrictions on escrow restructurings.
(i) In general.
(ii) Example.
(f) Temporary periods in refundings.
(1) General temporary period for refunding issues.
(2) Temporary periods for transferred proceeds.
(i) In general.
(ii) Termination of initial temporary period for prior issue in an advance refunding.
(3) Certain investment proceeds.
(4) Certain accrued interest.
(5) Certain costs of issuance.
(g) Minor portions in refundings.
(h) Reasonably required reserve or replacement funds in refundings.
(1) In general.
(i) Aggregate size limitation for both refunding issue and prior issue.
(ii) Use limitation.
(2) Ruling required for reserve or replacement funds in higher amounts.
(i) Payment to Internal Revenue Service with respect to certain transferred proceeds of a current refunding issue.
(1) In general.
(2) Effect of payment.
(3) Manner of payment.
(j) Multipurpose issue allocations.
(1) In general.
(i) Allocation of gross proceeds and investments to portions of issue.
(ii) Allocation of bonds to portions of issue.
(iii) Allocations involving certain common costs.
(iv) Separate issue treatment.
(2) General anti-abuse rule for multipurpose issue allocations.
(3) Separate governmental purposes of a multipurpose issue.
(i) In general.
(ii) Financing of common costs.
(4) Allocations of bonds of a multipurpose issue.
(i) Safe harbor for pro rata allocation method for bonds.
(ii) Safe harbor for allocations of bonds used to finance separate purpose investments.
(iii) Rounding of bond allocations to next whole bond denomination permitted.
(iv) Restrictions on bond allocations to refunding purposes.
(k) Effective date.
(1) In general.
(2) Elective early application of multipurpose issue allocation rule.

Par. 5. Proposed § 1.148–8 published May 15, 1989 (54 FR 20861) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice of proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing temporary regulations published the same day (56 FR 19023), is amended as follows:

1. Paragraph (d)(1) is revised.
2. Paragraph (d)(2) is revised.
3. Paragraph (d)(7) heading is revised and text is added.
4. Paragraph (d)(8) is revised.
5. Paragraph (f)(2)(i) is revised.
6. Paragraph (f)(2)(ii) is revised.
7. The revised and added provisions read as follows:

**§ 1.148–8 Definitions and special rules relating to required rebate.**

* * * * *

(d) *Gross proceeds*—(1) *In general.* "Gross proceeds" means, with respect to an issue, any proceeds of the issue and any replacement proceeds of the issue.

(2) *Proceeds.* "Proceeds" means, with respect to an issue, any original proceeds and any transferred proceeds of the issue.

* * * * *

(7) *Replacement proceeds.* "Replacement proceeds" means, with respect to an issue, amounts (excluding proceeds of that issue, as defined in § 1.148–8T(d)(2)), that are gross proceeds of that issue because the amounts are replaced by proceeds of that issue under section 148(a)(2) of the Code. Replacement proceeds include amounts held in a sinking fund, pledged fund, or reserve or replacement fund for the issue and, in the case of a refunding issue, any amounts that are replacement proceeds of the refunding issue under § 1.148–11(c)(2).

(8) *Transferred proceeds.* "Transferred proceeds" has the same meaning as in § 1.148–11(c)(10).

* * * * *

(f) * * *

(2) * * * (i) *Refunding issue.* "Refunding issue" has the same meaning as in § 2.148–11(b)(1).

(ii) *Refunded issue.* "Refunded issue" has the same meaning as the term "prior issue" in § 1.148–11(b)(5).

* * * * *

Par. 6. New § 1.148–11 is added to read as follows:

**§ 1.148–11 Arbitrage rules for refunding issues.**

(a) *Scope of application*—(1) *In general.* This section contains special rules for refunding issues. Except as provided in paragraphs (a)(2) and (a)(3) of this section, these rules apply for all purposes of sections 148 and 149(d). These rules govern allocations of gross proceeds, bonds, and investments to determine transferred proceeds, temporary periods, reasonably required reserve or replacement funds, minor portions, and separate issue treatment of certain multipurpose issues.

(2) *Limitations on application for purposes of section 148.* This section does not apply in determining whether two or more obligations (as defined in paragraph (c)(4) of this section) are part of the same "issue" for the following purposes:

(i) *Arbitrage yield on a particular issue.* Determining the composite "yield" on an issue for purposes of the arbitrage yield restrictions of section 148 and the arbitrage rebate requirement of section 148(f). See § 1.103–13(c)(1)(ii) and § 1.148–3T.

(ii) *Arbitrage rebate on a particular issue.* Applying the arbitrage rebate requirement of section 148(f) to an issue.

(3) *Limitations on application for purposes of section 149(d) restriction on the number of advance refundings.* For purposes of determining compliance with the restriction in section 149(d)(3)(A)(i) on the number of advance refunding issues, except as provided in paragraph (a)(4) of this section, if the interest on an advance refunding issue (as defined in paragraph (b)(4) of this section) is not excludable from gross income under section 103(a), then that advance refunding issue (a taxable advance refunding issue) is not treated as an advance refunding issue for purposes of section 149(d)(3)(A)(i).

(4) *Certain taxable advance refundings taken into account under section 149(d)*—(i) *In general.* For purposes of determining the permitted number of advance refunding issues under section 149(d)(3)(A)(i), a taxable advance refunding issue is taken into account if—

(A) It is part of a series of refundings (as defined in paragraph (a)(4)(ii) of this section);

(B) A tax exempt current refunding issue directly or indirectly succeeds the taxable advance refunding issue; and

(C) That tax exempt current refunding issue and another tax exempt issue in the series are outstanding concurrently for longer than 90 days.

(ii) *Series of refundings.* An issue is part of a series of refundings if it finances or refinances the same expenditures for a particular governmental purpose as another issue.

(iii) *Example.* If an issuer refunds a tax exempt issue with a taxable advance refunding issue, the issuer refunds that taxable issue with a tax exempt current refunding issue, and the two tax exempt issues remain outstanding concurrently for more than 90 days, then the taxable advance refunding issue is treated as an advance refunding issue in that series for purposes of section 149(d)(3)(A)(i).

(b) *Definitions of refunding issue and prior issue.* For purposes of this section, the following definitions apply:

(1) *Refunding issue.* Except as provided in paragraph (b)(2) of this section, "refunding issue" means an

issue of obligations (or, in the case of a multipurpose issue, the portion of the multipurpose issue allocable under paragraph (j)(1)(iv) of this section to a use described in this paragraph (b)(1)) the gross proceeds of which are used to pay debt service (as defined in paragraph (c)(1) of this section) on another issue (a "prior issue," as more particularly defined in paragraph (b)(5) of this section) or to finance reasonable issuance costs, accrued interest, capitalized interest on the refunding issue, a reasonably required reserve or replacement fund, amounts permitted by § 1.103–15, or similar costs properly allocable to the issue.

(2) *Exceptions and special rules.* For purposes of paragraph (b)(1) of this section, the following exceptions and special rules apply:

(i) *Payment of certain interest.* An issue is not a refunding issue if the gross proceeds of the issue are not used to pay any debt service (as defined in paragraph (c)(1) of this section) on another issue other than interest described as follows:

(A) Interest that accrues on the other issue during a one-year period including the date of issue of the issue that finances the interest,

(B) Interest that is a "capital expenditure" (as defined in § 1.150–1(h)), or

(C) Interest that is a "qualified working capital expenditure" (as defined in § 1.148–4(d)(3)(ii) [1]).

(ii) *Certain issues with different obligors*—(A) *In general.* An issue is not a refunding issue to the extent that the obligor (as defined in paragraph (b)(2)(ii)(B) of this section) of one issue is neither the obligor of the other issue nor a related party (as defined in paragraph (b)(2)(ii)(C) of this section) with respect to the obligor of the other issue.

(B) *Definition of obligor.* Except as otherwise provided in the following sentence, the "obligor" of an issue means the actual issuer of the issue. If a portion of an issue is properly allocable to an investment in a purpose investment, the obligor of that portion of the issue means the conduit borrower (as defined in § 1.150–1(g)) under that purpose investment.

(C) *Definition of related party.* When applied to a governmental unit or a 501(c)(3) organization, "related party" means any member of the same "controlled group" (as defined in § 1.150–1(f)) as that party. When applied to any person that is not a governmental unit or 501(c)(3) organization, "related party" means "related person" (as defined in section 144(a)(3)).

(iii) *Certain repayments of debt to related parties.* If the gross proceeds of an issue are used directly or indirectly to pay debt service on an obligation owed to a person that is a related party to the obligor, that use is not treated as an expenditure of those gross proceeds under § 1.148–4(d). Thus, that use is not an expenditure for the payment of debt service on the obligation owed to the related party.

(iv) *Certain special rules for purpose investments.* For purposes of this paragraph (b), the following special rules apply:

(A) *Definition of conduit loan, conduit financing issue, and conduit loan refunding issue.* For purposes of this paragraph (b)(2)(iv)—

(*1*) A "conduit loan" is a purpose investment that is an obligation;

(*2*) A "conduit financing issue" is an issue all or a portion of the gross proceeds of which are invested in one or more conduit loans; and

(*3*) A "conduit loan refunding issue" is a refunding issue within the meaning of paragraph (b)(1) that is used to refund a prior issue that is a conduit loan.

(B) *Refunding of a conduit financing issue by a conduit loan refunding issue.* Except as provided in paragraph (b)(2)(iv)(C) of this section, if a conduit borrower uses gross proceeds of a conduit loan refunding issue to make debt service payments on a conduit loan ("conduit loan refunding payments") and the issuer of a conduit financing issue uses those conduit loan refunding payments directly or indirectly to pay debt service on the conduit financing issue or any other issue, then for purposes of paragraph (b)(1) of this section, that debt service so paid is treated as paid from the gross proceeds of the conduit loan refunding issue. Thus, a conduit loan refunding issue may be a refunding issue under paragraph (b)(1) of this section with respect to both the conduit loan and either the conduit financing issue or another issue.

(C) *Recycling of certain payments under purpose investments.* If an issuer of a conduit financing issue, as holder of a conduit loan, receives conduit loan refunding payments and uses those payments either to make a new conduit loan during the applicable temporary period for those amounts under section 148(c) or to pay interest on the conduit financing issue during that temporary period, then, for purposes of paragraph (b)(1) of this section, the conduit loan refunding issue is not a refunding issue with respect to the conduit financing issue. Any such new conduit loan is treated as made from the gross proceeds of the conduit financing issue.

(v) *Substance of transaction controls.* In the absence of other applicable controlling rules under this paragraph (b), the determination of whether an issue is a refunding issue is based on the substance of the transaction in light of all the facts and circumstances.

(3) *Current refunding issue.* "Advance refunding issue" means a refunding issue that is issued not more than 90 days before the last expenditure of any gross proceeds of the refunding issue for the payment of debt service on the prior issue.

(4) *Advance refunding issue.* "Advance refunding issue" means a refunding issue that is not a current refunding issue.

(5) *Prior issue.* "Prior issue" means an issue of obligations all or a portion of the debt service on which is paid or provided for with gross proceeds of a refunding issue. A prior issue may be issued before, at the same time as, or after a refunding issue.

(6) *Unrefunded amount remains eligible for future advance refunding.* For purposes of the restriction in section 149(d)(3)(A)(i) on the permitted number of advance refunding issues, any debt service on a prior issue that has not been paid or provided for by any advance refunding issue is not treated as having been advance refunded for purposes of section 149(d).

(c) *Other definitions.* For purposes of this section, the following definitions apply—

(1) *Debt service.* "Debt service" means any principal of an issue of obligations, any interest on an issue, and any redemption premium or other amount paid to retire or redeem an issue.

(2) *Gross proceeds of refunding issue*—(i) *In general.* "Gross proceeds," with respect to a refunding issue, has the same meaning as in § 1.148–8T(d)(1).

(ii) *Certain released amounts.* Replacement proceeds of a refunding issue include any amounts that become available to an issuer as a direct or indirect result of the refunding ("released amounts") to the extent that—

(A) Immediately prior to the date of issue of the refunding issue, the released amounts were replacement proceeds of the prior issue;

(B) As a result of the refunding, the released amounts cease to be replacement proceeds of the prior issue; and

(C) The released amounts are not allocated to expenditures for a governmental purpose within 180 days

[1] See proposed rules published on January 30, 1992 (57 FR 3562).

after the date of issue of the refunding issue. For this purpose, released amounts are allocated to expenditures only if the allocation satisfies § 1.148–4, applied as if the amounts were gross proceeds of the prior issue.

(iii) *Certain after-arising amounts.* Replacement proceeds of a refunding issue include any amounts, including investment earnings thereon, that become available to an issuer after the date of issue of the refunding issue as a direct or indirect result of the refunding ("after-arising amounts") to the extent that—

(A) As of the date of issue of the refunding issue, the after-arising amounts are reasonably expected by the issuer to become available to acquire higher yielding investments;

(B) The after-arising amounts are used directly or indirectly to pay debt service on the prior issue or any other issue; and

(C) The after-arising amounts are in excess of the savings attributable to the refunding. For this purpose, "savings" means present value debt service savings within the meaning of section 149(d)(3)(B)(i).

(iv) *Examples.* The following examples illustrate the application of paragraph (c)(2)(iii) of this section:

*Example 1.* City *A* had an outstanding $10,000,000 issue that bore interest at 10 percent, that was callable at par beginning on January 1, 1996, and that matured on January 1, 2016 (the "prior issue"). On January 1, 1993, *A* issued a $2,665,000 refunding issue that bore interest at 7 percent and that matured on January 1, 2023, to pay all interest on the prior issue through January 1, 1996 (the "refunding issue"). The proceeds of the refunding issue, including investment earnings, invested at a yield of approximately 7 percent will be used to pay interest on the prior issue. Thus, *A* will reduce its cash flow needs for interest costs by $813,450 annually during the period from January 1, 1993, through January 1, 1996. This reduction represents the difference between the interest on the prior issue paid with the proceeds of the refunding issue ($1,000,000) and the interest payable on the refunding issue ($186,550). Each year, *A* will deposit $800,000 in revenues in a sinking fund for the prior issue and will use those amounts to pay principal of the refunded bonds on January 1, 1996. As a sinking fund for the prior issue, these $800,000 annual deposits would be restricted as to yield to the 10 percent yield on the prior issue. These revenues became available for this purpose as a consequence of the structure of the refunding issue. Thus, these amounts were reasonably expected to become available to be used to acquire higher yielding investments and to pay debt service on the prior issue. These amounts were used to pay a portion of the debt service on the refunded bonds. There were no present value savings associated with the refunding, however, because the refunding issue paid no principal of the prior issue prior to maturity. Therefore, as of each date that *A* deposits the $800,000 of revenues in the sinking fund for the prior issue, these amounts are treated as replacement proceeds of the refunding issue.

*Example 2.* City *A* had an outstanding $10,000,000 issue that bore interest at 10 percent, that was callable at par beginning on January 1, 1996, and that matured on January 1, 2016 (the "prior issue ). On January 1, 1993, City *A* issued a $10,800,000 refunding issue (the "refunding issue") that bore interest at 7 percent and that matured on January 1, 2023, to pay all debt service on the prior issue from January 1, 1993, through January 1, 1996, and to redeem the outstanding principal amount of the bonds of the prior issue at par on January 1, 1996. As a result of the refunding, *A* reduced its annual debt service by approximately $244,000 (not taking into account costs of issuance). This annual reduction represents the difference between the annual interest on the prior issue ($1 million) and the annual interest on the refunding issue ($756,000). This annual reduction is attributable to present value savings on the refunding. Accordingly, that amount is not replacement proceeds of the refunding issue under paragraph (c)(2)(iii) of this section, even if *A* deposits the amount in a sinking fund annually to provide for payment of debt service on any other issue.

(3) *Multipurpose issue.* "Multipurpose issue" means an issue that is used for two or more separate governmental purposes determined in accordance with paragraph (j) of this section.

(4) *Obligation.* "Obligation" means any evidence of indebtedness regardless of whether the interest on the indebtedness is excludable from gross income under section 103(a) or the obligor is a State or political subdivision thereof. A purpose investment that is an evidence of indebtedness is an obligation. The obligor of a purpose investment that is an obligation is a conduit borrower (as defined in § 1.150–1(g)).

(5) *Principal amount.* Except as provided in paragraph (c)(5)(i) or (c)(5)(ii) of this section, "principal amount" of a bond means face amount.

(i) *Bonds issued at a discount.* If the excess of the stated retirement price (as defined in § 1.148–3T(b)(6)(ii)) of the bond over its issue price (as defined in § 1.148–8T(c)) exceeds one-fourth of one percent of the stated retirement price at maturity multiplied by the number of complete years to maturity, the "principal amount" of that bond is its present value (as defined in § 1.148–3T(b)(8)).

(ii) *Bonds issued at a premium.* If the excess of the issue price (as defined in § 1.148–8T(c)) of the bond over its stated retirement price (as defined in § 1.148–3T(b)(6)(ii)) exceeds one-fourth of one percent of the stated retirement price at maturity multiplied by the number of complete years to maturity, the "principal amount" of that bond is its present value (as defined in § 1.148–3T(b)(8)).

(6) *Proceeds.* "Proceeds," with respect to an issue, has the same meaning as in § 1.148–8T(d)(2).

(7) *Purpose investment.* "Purpose investment" has the same meaning as in § 1.148–8T(e)(10).

(8) *Refunding escrow fund.* "Refunding escrow fund" means any escrow fund or funds invested in nonpurpose investments to provide for payment of any debt service on any prior issue.

(9) *Sale proceeds.* "Sale proceeds" has the same meaning as in § 1.148–8T(d)(4).

(10) *Transferred proceeds.* "Transferred proceeds" means any proceeds of a prior issue that become proceeds of a refunding issue and cease to be proceeds of the prior issue pursuant to paragraph (d) of this section (or the applicable corresponding provision of prior law).

(d) *Transferred proceeds allocation rule*—(1) *In general.* At the time that gross proceeds of the refunding issue (as defined in paragraph (c)(2) of this section)) discharge any of the outstanding principal amount of the prior issue, proceeds of the prior issue (as defined in paragraph (c)(6) of this section) become transferred proceeds of the refunding issue and cease to be proceeds of the prior issue. The amount of proceeds of the prior issue that becomes transferred proceeds of the refunding issue is an amount equal to the total proceeds of the prior issue at the time of that discharge multiplied by a fraction—

(i) The numerator of which is the principal amount of the prior issue discharged with gross proceeds of the refunding issue on that date, and

(ii) The denominator of which is the total outstanding principal amount of the prior issue immediately prior to that discharge.

(2) *Application of transferred proceeds rule before universal cap rule.* Paragraphs (d)(1) and (e) of this section apply to allocate transferred proceeds and corresponding investments to a refunding issue on any date required by those paragraphs before the universal cap rule of § 1.148–4(b)(3) applies to reallocate any of those amounts.

(e) *Special allocation rules for refunding issues*—(1) *Allocations of investments to transferred proceeds.* (i) *In general.* When proceeds of a prior issue become transferred proceeds of a refunding issue, investments of proceeds of the prior issue that are held in a refunding escrow fund for another issue

are allocated to the transferred proceeds under the ratable allocation method described in paragraph (e)(1)(ii) of this section. Investments of proceeds of the prior issue that are not held in a refunding escrow fund for another issue are allocated to the transferred proceeds by consistent application of either the ratable allocation method described in paragraph (e)(1)(ii) of this section or the representative allocation method described in paragraph (e)(1)(iii) of this section.

(ii) *Ratable allocation method.* As a portion of the proceeds of a prior issue becomes transferred proceeds of a refunding issue under paragraph (d) of this section, an equal portion of each nonpurpose investment of proceeds of the prior issue is allocated to transferred proceeds of the refunding issue. In addition, an equal portion of each purpose investment of proceeds of the prior issue is allocated to transferred proceeds of the refunding issue.

(iii) *Representative allocation method.* As a portion of the proceeds of a prior issue becomes transferred proceeds of a refunding issue under paragraph (d) of this section, representative portions of the portfolio of nonpurpose investments and the portfolio of purpose investments of proceeds of the prior issue are allocated to transferred proceeds of the refunding issue. Unlike the ratable allocation method, this representative allocation method permits an allocation of particular whole investments. Whether a portion is representative is based on all the facts and circumstances, including, without limitation, whether the current yields, maturities, and current unrealized gains or losses on the particular allocated investments are reasonably comparable to those of the unallocated investments in the aggregate.

(2) *Allocations of mixed escrows to investments and expenditures for debt service on a prior issue*—(i) *In general.* Except as provided in paragraph (e)(2)(ii) of this section, if gross proceeds of a refunding issue and other amounts that are not gross proceeds of a refunding issue are deposited in a refunding escrow fund (a "mixed escrow fund"), the issuer must allocate those gross proceeds and other amounts to investments and to expenditures for debt service on the prior issue in a consistent manner that complies with § 1.148–4(e); provided that the expenditure of those gross proceeds must not occur faster than ratably with the expenditure of those other amounts in the mixed escrow fund. For example, if an accounting method allocates the amounts in the refunding escrow fund that are not gross proceeds of the refunding issue to expenditures for debt service on the prior issue before any allocations of gross proceeds of the refunding issue to those expenditures, that method meets the requirements of this paragraph (e)(2).

(ii) *Special rule for certain short-term funds.* If an amount is deposited in a mixed escrow fund, and, prior to the date of issue of the refunding issue, that amount had been held in a bona fide debt service fund, a fund to carry out the governmental purpose of the prior issue (e.g., a construction fund), or another fund the inappropriate use of which could cause the issue to violate section 149(d)(4), the issuer must allocate that amount to investments and expenditures in a consistent manner that complies with § 1.148–4(e); provided that the expenditure of that amount must occur not later than six months after the date that, prior to the date of issue of the refunding issue, the amount was reasonably expected by the issuer to be expended.

(3) *Restrictions on escrow restructurings*—(i) *In general.* If gross proceeds of a refunding issue are set aside in a refunding escrow fund to be used to pay debt service on a specified prior issue, those gross proceeds may not be allocated subsequently to expenditures for the payment of debt service on any other issue.

(ii) *Example.* The following example illustrates the application of this paragraph (e)(3).

*Example.* On January 1, 1985, County *B* issued a $10 million issue (the "1985 issue") that bore interest at 7 percent and that matured in 30 years. On January 1, 1996, to refund the 1985 issue, *B* issued an $8 million issue (the "1996 issue") that bore interest at 10 percent, that was callable in 10 years, and that matured in 30 years. *B* invested the proceeds of the 1996 issue in a refunding escrow fund (the "1985 escrow") structured to pay the 1995 issue at maturity. On January 1, 1997, *B* issued a $10 million issue (the "1997 issue") that bore interest at 6 percent, that was callable in 10 years, and that matured in 30 years. Instead of investing the proceeds of the 1997 issue in a refunding escrow fund to pay the 1996 issue, *B* sold the investments in the 1985 escrow at a premium. *B* used a portion of the proceeds of that escrow sale to fund a new refunding escrow fund for the 1996 issue. *B* invested the proceeds of the 1997 issue in a refunding escrow fund for the 1985 issue (the "new 1985 escrow"). *B* asserted that since the restructured escrow fund for the 1996 issue was financed with proceeds of the 1996 issue, payment of any principal amount of the 1996 issue from this source would not cause proceeds of the 1996 issue to become transferred proceeds of the 1997 issue. Since the proceeds of the 1996 issue were set aside in a refunding escrow fund to be used to refund the 1985 issue, these proceeds may not be allocated subsequently to expenditures for payment of debt service on any other issue.

(f) *Temporary periods in refundings.* Gross proceeds of a refunding issue may be invested in higher yielding investments under section 148(c) only during the following temporary periods:

(1) *General temporary period for refunding issues.* The general temporary period for gross proceeds (other than transferred proceeds) of a refunding issue is the period ending 30 days after the date of issue of the refunding issue. This general temporary period may be extended as provided in paragraphs (f)(3), (4), and (5) of this section.

(2) *Temporary periods for transferred proceeds*—(i) *In general.* Except as otherwise provided in paragraph (f)(2)(ii) of this section, each available temporary period for transferred proceeds of a refunding issue begins on the date they become transferred proceeds of the refunding issue and ends on the date that, without regard to the discharge of the prior issue, the available temporary period for those proceeds would have ended had those proceeds remained proceeds of the prior issue.

(ii) *Termination of initial temporary period for prior issue in an advance refunding.* The initial temporary period under § 1.103–14(b)(1) for gross proceeds of a prior issue terminates on the date of issue of an advance refunding issue to refund that issue.

(3) *Certain investment proceeds.* Except for those investment proceeds of a refunding issue held in a refunding escrow fund or otherwise reasonably expected to be used to pay debt service on the prior issue, the temporary period for investment proceeds (as defined in § 1.148–8T(d)(5)) of a refunding issue is the 1-year period beginning on the date of receipt of those investment proceeds.

(4) *Certain accrued interest.* Except for those proceeds of the refunding issue held in a refunding escrow fund or otherwise reasonably expected to be used to pay debt service on the prior issue, the temporary period for proceeds of a refunding issue that represent not more than 6 months' accrued interest on the refunding issue is the 1-year period beginning on the date of issue.

(5) *Certain costs of issuance.* Except for those proceeds of a refunding issue held in a refunding escrow fund or otherwise reasonably expected to be used to pay debt service on the prior issue or those proceeds described in paragraph (f)(4) of this section, the temporary period for proceeds of a refunding issue that are to be used to

pay issuance costs is the 1-year period beginning on the date of issue.

(g) *Minor portions in refundings.* As of the date of issue of the refunding issue and at all times thereafter, a minor portion of the proceeds of the refunding issue qualifies for investment in higher yielding investments under section 148(e), and a minor portion of the proceeds of the prior issue qualifies for investment in higher yielding investments under either section 148(e) or section 149(d)(3)(v), whichever is applicable. For purposes of section 148(e) and 149(d)(3)(v), "proceeds of the issue" means sale proceeds.

(h) *Reasonably required reserve or replacement funds in refundings*—(1) *In general.* As of the date of issue of a refunding issue and at all times thereafter, a reserve or replacement fund with respect to the refunding issue or the prior issue is a reasonably required reserve or replacement fund under section 148(d) only if:

(i) *Aggregate size limitation for both refunding issue and prior issue.* Except as provided in paragraph (h)(2) of this section, the aggregate amount invested in reserve or replacement funds for both the refunding issue and the portion of the prior issue refunded by the refunding issue does not exceed 10 percent of sale proceeds of the refunding issue (regardless of whether proceeds of the prior issue have become transferred proceeds of the refunding issue).

(ii) *Use limitation.* The gross proceeds of the refunding issue invested in the reserve or replacement fund are not used to pay debt service on the prior issue.

(2) *Ruling required for reserve or replacement funds in higher amounts.* A reserve or replacement fund in an amount in excess of the amount allowed under paragraph (h)(1) of this section is a reasonably required reserve or replacement fund only if the issuer receives a ruling from the Internal Revenue Service that the specified larger reserve or replacement fund is necessary.

(i) *Payment to Internal Revenue Service with respect to certain transferred proceeds of a current refunding issue*—(1) *In general.* If, as a result of a current refunding, proceeds of a prior issue that are held in a refunding escrow fund for another issue become transferred proceeds of a current refunding issue and the issuer is required to reduce the yield on nonpurpose investments of those transferred proceeds to satisfy arbitrage yield restrictions under section 148(a), the issuer may pay an amount to the Internal Revenue Service. That amount is treated as provided in paragraph (i)(2) of this section.

(2) *Effect of payment.* As of the date that a payment is made, the amount paid under this paragraph (i) is treated as a reduction in the yield on the nonpurpose investments of the transferred proceeds under § 1.103–13(c) and a reduction in actual receipts (as defined in § 1.148–2T(b)(2)(i)) from these investments.

(3) *Manner of payment.* Except as otherwise prescribed by the Commissioner, a payment under paragraph (i)(1) of this section is made when paid to the Internal Revenue Service at the same time and place, and in the same manner, as the issuer is required to file an information reporting return for the current refunding issue to which the payment relates under section 149(e).

(j) *Multipurpose issue allocations*—(1) *In general.* This paragraph (j) applies to allocations of multipurpose issues to the extent that these allocations affect allocations with respect to the refunding purposes of the multipurpose issue. Except as otherwise provided in this paragraph (j), gross proceeds, investments, and bonds of a multipurpose issue may be allocated among the various separate governmental purposes of the issue using any reasonable, consistently applied allocation method. The reasonableness of any allocation method used for this purpose is determined based on all the facts and circumstances. Except as otherwise provided in this paragraph (j), the following general allocation rules apply to multipurpose issues:

(i) *Allocation of gross proceeds and investments to portions of issue.* The portion of the gross proceeds and investments of gross proceeds of a multipurpose issue used for any separate governmental purpose of the issue must be reasonably allocated to the portion of the issue treated as a separate issue for that governmental purpose.

(ii) *Allocation of bonds to portions of issue.* The portion of the bonds of a multipurpose issue allocated to a separate governmental purpose must have an issue price that bears the same ratio to the aggregate issue price of all the bonds of the multipurpose issue as the portion of the sale proceeds of the multipurpose issue used for that governmental purpose bears to the aggregate sale proceeds of the multipurpose issue.

(iii) *Allocations involving certain common costs.* Except as otherwise provided in this paragraph (j)(1)(iii), gross proceeds, investments, and bonds of a multipurpose issue must be allocated among the separate governmental purposes to account for common costs described in paragraph (j)(3)(ii) of this section using any reasonable allocation method. For this purpose, ratable allocations of common costs among the separate governmental purposes of the multipurpose issue is generally a reasonable allocation method. If another allocation method more accurately reflects the extent to which any separate governmental purpose of a multipurpose issue enjoys the economic benefit or bears the economic burden of certain common costs, that allocation method may be used to account for those common costs.

(iv) *Separate issue treatment.* The portion of the bonds of a multipurpose issue reasonably allocated to any separate governmental purpose under this paragraph (j) is treated as a separate issue for all purposes of section 148 and 149(d) except as limited by paragraph (a) of this section.

(2) *General anti-abuse rule for multipurpose issue allocations.* An allocation method used to allocate gross proceeds, investments, or bonds of a multipurpose issue is not reasonable if it is employed as an artifice or device under § 1.103–13(j) or § 1.148–9T(g) to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

(3) *Separate governmental purposes of a multipurpose issue.*

For purposes of this paragraph (j), separate governmental purposes of a multipurpose issue are determined as follows—

(i) *In general.* Separate governmental purposes of a multipurpose issue include the refunding of a separate prior issue, the financing of a separate purpose investment, the financing of a construction issue (as defined in § 1.148–6(e)), and each other clearly discrete governmental purpose reasonably expected to be financed by that issue. For purposes of the preceding sentence, if a prior issue was used for separate governmental purposes, the separate governmental purposes of a refunding issue with respect to that issue include the separate governmental purposes of the prior issue. Separate governmental purposes may be treated as a single governmental purpose if gross proceeds of the multipurpose issue used to finance those purposes are eligible for the same initial temporary period under section 148(c). For example, the use of gross proceeds of a multipurpose issue to finance separate qualified loans for owner-occupied residences under

section 143 may be treated as a single purpose.

(ii) *Financing of common costs.* Common costs of a multipurpose issue are not separate governmental purposes. Common costs include issuance costs, accrued interest, capitalized interest on the issue, a reasonably required reserve or replacement fund, costs permitted by § 1.103-15, and similar costs properly allocable to the issue.

(4) *Allocations of bonds of a multipurpose issue*—(i) *Safe harbor for pro rata allocation method for bonds.* For purposes of paragraph (j)(1) of this section, allocation of bonds of a multipurpose issue among its separate governmental purposes using a pro rata allocation method is a reasonable method. Under the pro rata allocation method, either a ratable portion of each bond or a ratable number of substantially identical whole bonds (same interest rate, maturity, credit, and other terms) of the multipurpose issue are allocated among its separate governmental purposes in proportion to the amount of sale proceeds of the issue used for each separate governmental purpose.

(ii) *Safe harbor for allocations of bonds used to finance separate purpose investments.* For purposes of paragraph (j)(1) of this section, an allocation of a portion of the bonds of a multipurpose issue to a particular purpose investment is generally reasonable if that purpose investment has debt service that generally corresponds in time and amount to the debt service on the bonds allocated to that purpose investment.

(iii) *Rounding of bond allocations to next whole bond denomination permitted.* If a fractional allocation of bonds of a multipurpose issue among its separate governmental purposes satisfies paragraph (j)(4) of this section, then an allocation that rounds each such fractional allocation up or down to the next integral multiple of a permitted denomination of bonds of that issue not in excess of $100,000 also satisfies paragraph (j)(4) of this section.

(iv) *Restrictions on allocations of bonds to refunding purposes.* If a portion of a multipurpose issue is used for refunding purposes, a method of allocating bonds of that issue is reasonable under this paragraph (j) only if it satisfies one of the following tests:

(A) *Pro rata allocation method.* The portion of the bonds allocated to refunding purposes results from use of the pro rata allocation method under paragraph (j)(4)(i) of this section.

(B) *Weighted average maturity test.* The portion of the bonds allocated to refunding purposes has a weighted average maturity that is not less than 90% of the remaining weighted average maturity of the bonds being refunded by the multipurpose issue.

(k) *Effective Date*—(1) *In general.* The provisions of this section are effective FOR ALL ISSUES ISSUED AFTER [THE DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

(2) *Elective early application of multipurpose issue allocation rule.* If an allocation of any multipurpose refunding issue or multipurpose prior issue would affect allocations with respect to the refunding purposes of a multipurpose issue that is issued on or after February 12, 1992 and before the general effective date of this section under paragraph (k)(1) of this section, the issuer may elect to apply paragraph (j) of this section for purposes of making that allocation. This election must be made on or before [THE DATE THAT IS FOUR MONTHS AFTER THE DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**] in the manner provided in § 1.148-8T(h) without regard to the times specified in § 1.148-8T(h)(i) (i) and (ii).

**David G. Blattner,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 92-3162 Filed 2-16-92; 12:52 pm]

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**26 CFR Part 1**

**[FI-66-89; FI-90-91; and FI-1-90]**

**RIN 1545-AO14; 1545-AQ19; and 1545-AO33**

## Allocation and Accounting Rules for Arbitrage Rebate Purposes; Transferred Proceeds Allocations and Other Arbitrage Restrictions on Refunding Issues; and Spending Exceptions to Arbitrage Rebate Requirement on Tax Exempt Bonds; Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on three separately-issued sets of proposed regulations. First, the hearing will cover proposed regulations on general allocation and accounting rules applicable to bonds issued by States and local governments for purposes of the arbitrage rebate requirement. Second, the hearing will cover proposed regulations on transferred proceeds allocations and other restrictions on refunding issues for purposes of arbitrage yield restrictions and the arbitrage rebate requirements. Third, the hearing will cover proposed regulations on the availability and application of the 6-month exception and the 2-year construction exception to the arbitrage rebate requirement.

**DATES:** The public hearing will be held on Friday, April 3, 1992, beginning at 10 a.m. Written comments from persons wishing to participate at the hearing, requests to speak and outlines of oral comments must be received by Friday, March 20, 1992.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI-66-89; FI-90-91; and FI-1-90), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is three separately-issued sets of proposed regulations under section 148 of the Internal Revenue Code. The proposed regulations on allocation and accounting rules for arbitrage rebate purposes, FI-66-89, appeared in the **Federal Register** for January 30, 1992 (57 FR 3562). The other proposed regulations that are the subject of the hearing appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments by March 20, 1992, and who also desire to present oral comments at the hearing on the proposed regulations should also submit not later than Friday, March 20, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-3168 Field 2-6-92; 12:53 pm]

BILLING CODE 4830-01-M

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**26 CFR Part 1**

**[FI-1-90]**

**RIN 1545-AO33**

## Spending Exceptions to the Arbitrage Rebate Requirement on Tax Exempt Bonds

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that clarify the availability and application of the 6-month exception and the 2-year construction exception to the arbitrage rebate requirement applicable to tax exempt bonds issued by States and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990.

**DATES:** Written comments must be received by April 13, 1992. However, for those wishing to participate at the hearing, written comments, requests to speak, and outlines of oral comments should be received by March 20, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register.**

**ADDRESSES:** Send comments, requests to appear at the public hearing, and outlines of comments to be presented, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-1-90), room 5528, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Scott R. Lilienthal, (202) 566-3347 (not a toll-free number). Concerning the public hearing, Carol Savage of the Regulations Unit, (202) 566-3935 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in proposed §§ 1.148-6(e)(2), (g), (h)(2), (h)(3)(iii), (j), (k)(2), (l), (m), (n), (o), (p), and (q). This information will be used to verify that an issuer of tax exempt bonds is properly complying with the 6-month exception and the 2-year constuction exception to the arbitrage rebate requirements. The taxpayers affected are States and political subdivisions that issue bonds, entities that issue bonds on behalf of States or political subdivisions, and substantial beneficiaries of bonds issued by such entities.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual recordkeeping burden: 3,750 hours.

The estimated average annual burden per recordkeeper is 1.5 hours.

Estimated number of recordkeepers: 2,500.

### Background

This document proposes to amend the Income Tax Regulations (26 CFR part 1) to provide rules regarding the availability and application of the 6-month exception and the 2-year construction exception to the arbitrage rebate requirement provided in sections 148(f)(4) (B) and (C) of the Internal Revenue Code. The proposed regulations reflect the amendments to section 148(f)(4)(B) and the addition of section 148(f)(4)(C) to the Code by the Revenue Reconciliation Act of 1990 (Pub. L. 101-508).

### Explanation of Provisions

*I. Overview*

Sections 148(f)(4) (B) and (C) provide two exceptions to the requirement that, in order for the interest on bonds to be excludable from gross income under section 103, arbitrage earned by investing bond proceeds in higher-yielding nonpurpose investments be rebated to the United States. Both of these exceptions are based on the principle that, if bond proceeds are spent within a reasonably short period of time after the date of issue, issuers should be relieved of the administrative burden of complying with the arbitrage rebate requirement because the potential for arbitrage is minimal. These two provisions are referred to as the "spending exceptions" to arbitrage rebate.

The 6-month exception of section 148(f)(4)(B) generally provides an exception from the arbitrage rebate requirement if the gross proceeds of an issue are expended for its governmental purposes within 6 months after the date of issue, with an additional 6-month spending period for certain de minimis amounts in the case of governmental (i.e., non-private activity) or qualified 501(c)(3) bonds.

The 2-year construction exception of section 148(f)(4)(C) applies only to construction issues, which are generally defined as any issue of governmental or qualified 501(c)(3) bonds of which at least 75 percent of the available construction proceeds are used for construction expenditures. This exception applies if the available construction proceeds of a construction issue are spent for the governmental purposes of the issue within 2 years of the date of issue according to a prescribed schedule of semi-annual spending periods. An issuer of a construction issue also may elect to pay a penalty in lieu of arbitrage rebate if the issue fails the spending requirements. The penalty amount is equal to 1½ percent of the amount that was not spent as required at the close of any semi-annual spending period.

The proposed regulations address technical issues raised by the spending exceptions.

*II. 6-Month Exception*

A. Definitions

The definitions provided for purposes of the 6-month exception are generally consistent with the definitions used for purposes of the arbitrage rebate provisions, except for certain special rules applicable only for purposes of the 6-month exception.

B. Refunding Bonds

The proposed regulations provide rules for application of the 6-month exception to refunding bonds. As under the 2-year construction exception, any portion of an issue used to refund another issue must be treated as a

separate issue. A spending rule for transferred proceeds is also provided to clarify that the spending period is measured from the date of issue of the refunded bonds.

C. De Minimis Violations Caused by Unforeseeable Events

The preamble to the 1989 temporary rebate regulations (TD 8252) stated that safe harbors were being considered for de minimis failures to spend all gross proceeds within 6 months if caused by unforeseeable events. The proposed regulations do not include such a safe harbor because a sufficient de minimis rule for governmental bonds and qualified 501(c)(3) bonds is provided by section 148(f)(4)(B)(ii), under which, if the issue fails the 6-month spending requirement by no more than the lesser of 5 percent of the issue price or $100,000, the spending period is extended for an additional 6 months.

*III. 2-year Construction Exception*

A. Definitions

The proposed regulations define certain terms to clarify the scope of the 2-year construction exception.

*Construction expenditures.* Section 148(f)(4)(C)(iv) provides that an issue is not a construction issue eligible for the 2-year construction exception unless at least 75 percent of the available construction proceeds of the issue are to be used for construction expenditures. Thus, the scope of the 2-year construction exception depends upon the definition of construction expenditure.

The proposed regulations generally distinguish construction expenditures from acquisition expenditures. If property is being acquired rather than constructed, the issuer generally is able to spend all proceeds within 6 months and to qualify for the 6-month exception.

The proposed regulations provide a general rule that expenditures that are properly chargeable to, or may be capitalized as part of, the basis of real property, except expenditures for the acquisition of real property, are construction expenditures.

Turnkey contracts for real property improvements are common in State and local bond financings. The proposed regulations provide that turnkey-type arrangements for real property improvements are not treated as an acquisition of property for purposes of the 2-year construction exception, except to the extent of construction performed by the seller before the contract is entered into.

The proposed regulations exclude all expenditures for the acquisition of land from the definition of construction expenditures. For example, the proposed regulations do not treat the costs of acquisition of rights-of-way for a sewer or road construction project, or for power transmission lines, as construction expenditures. Nonetheless, up to 25 percent of the available construction proceeds of a construction issue may be used for non-construction expenditures. This 25 percent allowance will accommodate the financing of land acquisitions and related costs. Comments are solicited on this issue.

In addition to the general rule focusing on real property, the proposed regulations include a special rule providing that expenditures for certain personal property, referred to as "constructed personal property," are construction expenditures. Personal property not built by the issuer is constructed personal property if the property is acquired pursuant to a contract that requires the property to be specially built to the specifications of the buyer, the performance of the contract is completed more than 6 months after the date of the contract, and the issuer has no reason to believe that the seller could have performed the contract within 6 months. Personal property built by the issuer is constructed personal property if no more than 60 percent of the basis of the completed property is attributable to the costs of raw materials and components of the property acquired by the issuer, the property is completed more than 6 months after the date the issuer began building it, and the issuer, exercising due diligence, could not have completed the property within 6 months.

*Construction issue.* Section 148(f)(4)(C)(iv) generally defines "construction issue" as any issue of governmental or qualified 501(c)(3) bonds at least 75 percent of the available construction proceeds of which "are to be used" for construction expenditures. The proposed regulations provide that this use-of-proceeds test for qualification as a construction issue is determined based on actual expenditures. However, the proposed regulations permit an issuer to elect to satisfy this use-of-proceeds test based on its reasonable expectations concerning the use of proceeds for construction expenditures as of the date of issue. If an issuer makes this special election, the determination of whether expenditures are construction expenditures, and the determination of whether 75 percent of the available construction proceeds are "to be used" for those expenditures, are based on the issuer's reasonable expectations as of the date of issue. An issuer must make this special election in order to elect to pay the penalty in lieu of arbitrage rebate.

If an issuer makes this special election, the proposed regulations require that reasonable expectations be stated and supported in a written certification. The certification is not conclusive and may be disregarded by the Service in appropriate situations. The proposed regulations also clarify that reasonable expectations are determined based on all the relevant facts and circumstances.

*Available construction proceeds.* Section 148(f)(4)(C)(vi) defines "available construction proceeds" of a construction issue as the issue price of the issue, plus earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of these earnings, less the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue. The proposed regulations provide that earnings include both actual earnings up to the end of a spending period and reasonably expected earnings thereafter. This rule requires issuers to reevaluate their expectations regarding future investment earnings every 6 months during the 2-year construction period in order to recalculate the available construction proceeds for purposes of the spending requirements.

In order to simplify computations for issuers, the proposed regulations permit issuers to elect to use reasonably expected earnings as of the date of issue to determine the available construction proceeds as of the end of the first three semi-annual spending periods. An issuer that makes this election is still required to take into account actual earnings plus expected future earnings as of the end of the fourth spending period and any spending period thereafter.

The proposed regulations also provide guidance regarding the effect on available construction proceeds of earnings on a reasonably required reserve or replacement fund and amounts paid as penalty in lieu of arbitrage rebate.

B. Apportioning an Issue

The proposed regulations provide rules regarding the election under section 148(f)(4)(C)(v) to treat a portion of an issue as a separate construction issue. In general, an issuer making this election must specify the amount of the apportionment on or before the date of issue.

C. Penalty in Lieu of Arbitrage Rebate

The proposed regulations provide rules concerning the election to pay a penalty, in lieu of paying arbitrage rebate, if the spending requirements of the 2-year construction exception are not met. Rules are provided regarding the calculation of the amount of the penalty, including the treatment of reasonable retainage, and procedures are provided for making payments of the penalty. Rules are also provided for terminating the penalty. These provisions are intended to be consistent, where possible, with similar rules dealing with the payment of arbitrage rebate.

D. Pooled Financing Bonds

Section 148(f)(4)(C)(xi) permits an issuer of pooled loan financing bonds to elect to have the 2-year period for the spending requirements apply separately to each loan. Under this rule, the 2-year period for each loan begins on the earlier of the date the loan is made by the issuer or 1 year after the date of issue. The proposed regulations provide certain operating rules for purposes of this election.

Ordinarily, issuers that elect to apportion an issue must, on or before the date of issue, specifically identify the amount of the issue that is to be treated as a separate construction issue. In certain pooled loan financings, however, the issuer may not know on the date of issue the amount to be apportioned to each loan to be made. Accordingly, the proposed regulations provide that, if an issuer of pooled financing bonds makes the election described in the preceding paragraph, it is not required on the date of issue to identify the specific amount of the issue that will be treated as a separate construction issue. Instead, the issuer is required to supplement its election by identifying, on or before the date the loan is made, the specific amount of each loan made within 1 year of the date of issue that is treated as part of the separate construction issue. All other proceeds that are part of the construction issue must be specifically identified no later than 1 year after the date of issue. In addition, the provisions regarding termination of the penalty in lieu of arbitrage rebate apply to each loan separately instead of to the entire issue; this is to permit an issuer to terminate the penalty for a particular loan without terminating the penalty for all other loans from the issue as well. All other elections must be made by the issuer with respect to the entire issue.

E. Election Out or 2-Year Construction Exception.

The proposed regulations permit an issuer to elect that a construction issue not be subject to the 2-year construction exception.

F. Effective Date

These regulations are proposed to apply to bonds issued after [the date that is 30 days after the date of publication of final regulations in the **Federal Register**], and to bonds issued before that date if the issuer so elects.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public comment procedure requirements of 5 U.S.C. 553(b) do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f)(1) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

See the notice of public hearing on these proposed regulations published elsewhere in this issue of the **Federal Register.**

**Drafting Information**

The principal authors of these proposed regulations are Michael G. Bailey and Scott R. Lilienthal, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

**List of subjects in 26 CFR 1.148–0 Through 1.150–1T**

Bonds, Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**Note:** The section numbers cited in the instructional paragraphs below as proposed sections reflect the section numbers as they would appear in the final rule (example: § 1.148–6). They do not reflect the "T" suffix currently found in the temporary rule version (example: § 1.148–6T).

## PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority for part 1 continues to read in part:

**Authority:** Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.148–0 through 1.148–9 also issued under 26 U.S.C. 148(f) and (i). * * *

**Par. 2.** Proposed § 1.148–0 published May 15, 1989 (54 FR 20861) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice of proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing temporary regulations published the same day (56 FR 19023), is amended as follows:

1. The third sentence in paragraph (a)(3) is revised as set forth below.

2. New paragraphs (b)(1)(iv) and (b)(6) are added as set forth below.

3. Paragraph (d) is amended by revising the entry for § 1.148–6 as set forth below.

4. The added and revised provisions read as follows:

**§ 1.148–0 Scope and effective date of restrictions on arbitrage.**

(a) * * *

(3) * * * Section 148(f)(4) provides exceptions from arbitrage rebate for certain proceeds spent within 6-months, for certain proceeds used to finance construction expenditures within 2 years, and for small issuers with general taxing powers. * * *

(b) * * *

(1) * * *

(iv) Revenue Reconciliation Act of 1989 and Revenue Reconciliation Act of 1990. Section 148(f)(4) was amended by the Revenue Reconciliation Act of 1989 and the Revenue Reconciliation Act of 1990 to add section 148(f)(4)(C) to provide an exception from arbitrage rebate for certain proceeds used to finance construction expenditures. These amendments to section 148(f)(4) are generally effective for bonds issued after December 19, 1989.

* * * * *

(6) *Effective date for provisions relating to spending exceptions to arbitrage rebate*—(i) *In general.* Section 1.148–6 applies to bonds issued after [the date that is 30 days after publication of that section as final regulations in the **Federal Register**].

(ii) *Election in.* In the case of bonds issued on or before [the date that is 30 days after publication of final regulations in the **Federal Register**], an issuer may elect to apply the provisions of § 1.148–6 to the bonds. This election must be made on or before the later of—

(A) The date that is 6 months after publication of final regulations in the **Federal Register**; and

(B) Sixty days after the first computation date of the issue that occurs after [the date that is 30 days after publication of final regulations in the **Federal Register**]. For the purposes of this paragraph (b)(6)(ii)(B), "computation date" means either an installment computation date or final computation date under § 1.148–8T(b) or the last day of a semi-annual spending period under section 148(f)(4)(C)(ii).

* * * * *

(d) *List of subjects.* * * *

* * * * *

*§ 1.148–6 Spending exceptions.*

(a) Scope of section.
  (1) In general.
  (2) Relationship of 6-month exception and 2-year construction exception.
(b) 6-month exception.
  (1) General rule.
  (2) Additional period for certain bonds.
  (3) Definition of gross proceeds.
  (4) Payments of interest on the issue.
  (5) Refunding issues.
  (i) In general.
  (ii) Multipurpose issues.
  (6) Accounting procedures.
(c) 2-year construction exception.
  (1) General rule.
  (2) Exception for reasonable retainage.
(d) Certain payments of interest.
(e) Construction issue.
  (1) Definition.
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  (i) Use of reasonable expectations as of date of issue.
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(f) Construction expenditures.
  (1) Definition.
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  (4) Definitions of real property and tangible personal property.
  (i) Real property.
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  (5) Definition of issuer.
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(g) Reasonable retainage.
  (1) Definition.
  (2) Five percent limitation.
(h) Available construction proceeds.
  (1) Definition.
  (2) Earnings on a reasonably required reserve or replacement fund.
  (3) Treatment of expected earnings.
  (i) Determination on issue date.
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  (iii) Election to use date of issue reasonable expectations.
  (4) One and one-half percent penalty in lieu of arbitrage rebate.
  (5) Payments on purpose investments.
  (6) Examples.
(i) Refunding issues.
  (1) Definition.
  (2) Refundings of construction issues.
  (3) Example.
(j) Apportioning of multipurpose issues.
  (1) Portion of issue used for refunding treated as separate issue.
  (2) Election to treat portion of issue used for construction as separate issue.
  (i) In general.
  (ii) Limitation on use of nonconstruction issue for construction expenditures.
  (3) Example.
(k) Accounting procedures.
  (1) In general.
  (2) Earnings as of fourth spending period.
  (3) Allocation of issuance costs.
(l) One and one-half percent penalty in lieu of arbitrage rebate.
  (1) In general.
  (2) No reasonable expectations required.
  (3) Application to reasonable retainage.
  (4) Coordination with arbitrage rebate requirement.
(m) Termination of 1½ percent penalty in lieu of arbitrage rebate.
  (1) Termination of 1½ percent penalty after initial temporary period.
  (2) Termination of 1½ percent penalty before end of initial temporary period.
  (3) Application to reasonable retainage.
  (4) Date construction is substantially completed.
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  (6) Example.
(n) Payment of penalties.
  (1) Rounding rule.
  (2) Computation credit.
  (3) Method.
  (4) Failure to pay.
  (i) Innocent failures.
  (ii) Payment of additional penalty in lieu of loss of tax exemption.
  (A) General rule.
  (B) Waiver by Commissioner.
  (iii) Effect of failure to pay.
(o) Pooled financing bonds.
  (1) Definition.
  (2) In general.
  (3) Spending requirements.
  (4) Apportionment of loans.
  (5) Termination of 1½ percent penalty in lieu of arbitrage rebate.
  (6) Other elections.
  (7) Examples.
(p) Election out of 2-year construction exception.
(q) Elections.
  (1) In general.
  (2) Transition rule for certain elections.
  (3) Procedural requirements.
  (4) Extension of time.

* * * * *

**Par. 3.** Proposed § 1.148–6 published May 15, 1989 (54 FR 20861) by cross-referencing temporary regulations published the same day (54 FR 20787) is amended by revising the heading and adding text to read as follows:

**§ 1.148–6 Spending exceptions.**

(a) *Scope of section*—(1) *In general.* This section provides guidance on the two spending exceptions to the arbitrage rebate requirement of section 148(f)(2). Paragraph (b) of this section provides guidance only for the exception in section 148(f)(4)(B) (the "6-month exception"). Paragraphs (c) through (q) of this section provide guidance only for the exception in section 148(f)(4)(C) (the "2-year construction exception").

(2) *Relationship of 6-month exception and 2-year construction exception.* The 6-month exception and the 2-year construction exception are independent exceptions to the requirement to pay arbitrage rebate. Qualification for one exception does not require qualification for the other. For example, a construction issue that satisfies the 6-month exception need not satisfy the 2-year construction exception in order to be exempt from the arbitrage rebate requirement. A construction issue may qualify for the 6-month exception even though the issuer makes one or more elections under the 2-year construction exception with respect to the issue.

(b) *6-month exception*—(1) *General rule.* Under section 148(f)(4)(B), an issue is treated as meeting the arbitrage rebate requirement of section 148(f)(2) if—

(i) The gross proceeds (as defined in paragraph (b)(3) of this section) of the issue are expended for the governmental purposes of the issue within the 6-month period beginning on the date of issue (the "6-month spending period"), and

(ii) The requirement of section 148(f)(2) is met for amounts not required to be spent within the 6-month spending period (other than earnings on amounts in any bona fide debt service fund).

(2) *Additional period for certain bonds.* Under section 148(f)(4)(B)(ii), the 6-month spending period is extended for an additional 6 months if—

(i) No part of the issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond, and

(ii) The gross proceeds of the issue are expended within the 6-month spending period except for a failure to spend an amount not exceeding the lesser of 5 percent of the issue price of the issue or $100,000.

(3) *Definition of gross proceeds.* For purposes of section 148(f)(4)(B) only, "gross proceeds" has the same meaning as in § 1.148-8T(d), except that it does not include—

(i) Amounts held in a bona fide debt service fund (as defined in § 1.103-14(b)(10)),

(ii) Amounts held in a reasonably required reserve or replacement fund (as defined in § 1.103-14(d), but limited in amount as required by section 148(d)),

(iii) Amounts that, as of the date of issue of the bonds, are not reasonably expected to be gross proceeds but that become gross proceeds after the end of the 6-month spending period, and

(iv) Payments received under any purpose investment of the issue and earnings on those payments.

(4) *Payments of interest on the issue.* The governmental purpose of an issue includes payments of interest on, but not payments of principal of, the issue.

(5) *Refunding issues*—(i) *In general.* A refunding issue (as defined in § 1.148-11(b)(1) [1]) satisfies the spending requirements of section 148(f)(4)(B)(i)(I) and paragraph (b)(1)(i) of this section only if—

(A) All amounts that become transferred proceeds (as defined in § 1.148-11(c)(10)) of the refunding issue are expended within 6 months after the date of issue of the earliest tax exempt issue under section 103(a) (including the refunding issue) with respect to which the amounts were treated as proceeds for purposes of section 148(f), and

(B) All other gross proceeds of the refunding issue are expended within 6 months after the date of issue of the refunding issue.

(ii) *Multipurpose issues.* If any portion of a multipurpose issue (as defined in § 1.148-11(c)(3)) is treated as a separate issue allocable to refunding purposes under § 1.148-11(j), that portion is treated as a separate issue, except as limited by § 1.148-11(a)(2).

(6) *Accounting procedures.* All allocations made for purposes of section 148(f)(4)(B) must comply with the requirements of §§ 1.148-4 [2] and 1.148-11. For example, gross proceeds are expended when they are allocated to an expenditure under § 1.148-4, and allocations between the refunding issue and the nonrefunding issue of a multipurpose issue must comply with § 1.148-11.

(c) *2-year construction exception*—(1) *General rule.* Under section 148(f)(4)(C), the arbitrage rebate requirement of section 148(f)(2) does not apply to the available construction proceeds of a construction issue if the available construction proceeds are spent for the governmental purposes of the issue in accordance with the schedule provided in this paragraph (c)(1). "Construction issue" is defined in section 148(f)(4)(C)(iv) and paragraph (e) of this section, and "available construction proceeds" is defined in section 148(f)(4)(C)(vi) and paragraph (h) of this section. The spending schedule is as follows:

(i) At least 10 percent are spent within the 6-month period beginning on the date of issue (the "first spending period");

(ii) At least 45 percent are spent within the 1-year period beginning on the date of issue (the "second spending period");

(iii) At least 75 percent are spent within the 18-month period beginning on the date of issue (the "third spending period"); and

(iv) Except as otherwise provided in paragraph (c)(2) of this section, 100 percent are spent within the 2-year period beginning on the date of issue (the "fourth spending period").

(2) *Exception for reasonable retainage.* Under section 148(f)(4)(C)(iii), the requirement that 100 percent of available construction proceeds be spent by the end of the fourth spending period is treated as met if—

(i) As of the end of the fourth spending period, all of the available construction proceeds have been spent for the governmental purposes of the issue, except for amounts set aside as reasonable retainage (as defined in paragraph (g)(1) of this section),

(ii) The amounts set aside as reasonable retainage satisfy the 5 percent limitation described in paragraph (g)(2) of this section, and

(iii) 100 percent of the available construction proceeds are actually spent for the governmental purposes of the issue within the 3-year period beginning on the date of issue.

(d) *Certain payments of interest.* The governmental purpose of an issue includes—

(1) Payments of interest on, but not payments of principal of, the issue, and

(2) Payments of interest on other obligations of the issuer if those payments do not cause the issue to be a refunding issue. See paragraph (i) of this section.

(e) *Construction issue*—(1) *Definition.* "Construction issue" means any issue (including a portion of a multipurpose issue treated as a separate issue under paragraph (j) of this section) that is not a refunding issue, if—

(i) At least 75 percent of the available construction proceeds of the issue are spent for construction expenditures (as defined in paragraph (f) of this section) with respect to property owned by a governmental unit or a 501(c)(3) organization, and

(ii) Any private activity bonds that are part of the issue are qualified 501(c)(3) bonds or private activity bonds issued to finance property owned by a governmental unit or a 501(c)(3) organization.

(2) *Special election*—(i) *Use of reasonable expectations as of date of issue*—(A) An issuer may elect, on or before the date of issue, to satisfy the requirements described in section 248(f)(4)(C)(iv)(I) and paragraph (e)(1)(i) of this section based upon its reasonable expectations as of the date of issue. Thus, if this special election is made, the issuer must, as of the date of issue, reasonably expect the existence of all facts and the occurrence of all events necessary for the issue to meet the requirements of a construction issue. For example, the issuer must reasonably expect the existence of facts and the occurrence of events that are necessary for expenditures to qualify as construction expenditures under paragraph (f) of this section and also must reasonably expect that at least 75 percent of the available construction proceeds of the issue will be used for those expenditures.

(B) An issuer must make this special election in order to elect to pay the 1½ percent penalty in lieu of arbitrage rebate under section 148(f)(4)(C)(vii) and paragraph (l) of this section.

(C) An issuer need not reasonably expect to meet the semi-annual spending requirements described in section 148(f)(4)(C)(ii) and paragraph (c)(1) of this section in order for the issue to qualify as a construction issue.

(ii) *Requirement to state and support reasonable exceptations*—(A) If an issuer makes this special election, expectations regarding the use of available construction proceeds must be stated and supported by the issuer in a written certification, included as part of the books and records maintained for the issue, made on or prior to the date of

[1] See proposed rules published elsewhere in this issue of the **Federal Register**.

[2] See proposed rules published on January 30, 1992, (57 FR 3562).

issue. This certification is binding upon the issuer but is not conclusive and may be disregarded by the Commissioner in appropriate circumstances.

(B) The determination of whether an issuer has reasonable expectations on the date of issue is based on all relevant facts and circumstances, including its history of using proceeds in accordance with similar certifications and actions taken toward use of the proceeds in accordance with the certification.

(3) *Ownership requirement*—(i) *In general.* Except as otherwise provided in this paragraph (e)(3), a governmental unit or 501(c)(3) organization is treated as the owner of property if it is treated as the owner for Federal income tax purposes or would be so treated if it were subject to Federal income taxation.

(ii) *Safe harbor for leases and management contracts.* Property leased by a governmental unit or a 501(c)(3) organization is treated as owned by the governmental unit or 501(c)(3) organization if the lessee complies with the requirements of section 142(b)(1)(B).

(iii) *On-behalf-of issuers.* Obligations issued on behalf of a State or local governmental unit (as defined in § 1.103–1) will qualify as a construction issue if the requirements of this paragraph (e) are met, even if the entity that actually issues the bonds and that is to hold legal title to the financed facility is not a governmental unit or a 501(c)(3) organization.

(iv) *Ownership by issuer not required.* The issuer need not be the owner of the property financed by the issue in order for the issue to qualify as a construction issue.

(f) *Construction expenditures*—(1) *Definition.* "Construction expenditures" means capital expenditures (as defined in § 1.150–1(h)) that are properly chargeable to or may be capitalized as part of the basis of—

(i) Real property (as defined in paragraph (f)(4)(i) of this section), other than expenditures for—

(A) The acquisition of any interest in land, and

(B) Except as provided in paragraph (f)(2) of this section, the acquisition of any interest in real property other than land, or

(ii) Constructed personal property (as defined in paragraph (f)(3) of this section).

(2) *Turnkey contracts and similar contracts.* Expenditures are not for the acquisition of an interest in real property other than land if the contract between the seller and the issuer requires the seller to build or install the property (such as under a "turnkey contract"), and the property has not been built or installed at the time the parties enter into the contract. If the property has been partially built or installed at the time the parties enter into the contract, expenditures that are allocable to the portion of the property built or installed before that time are expenditures for the acquisition of real property.

(3) *Constructed personal property.* "Constructed personal property" means tangible personal property (as defined in paragraph (f)(4)(ii) of this section) that meets the requirements of either paragraph (f)(3)(i) or paragraph (f)(3)(ii) of this section.

(i) *Property that the issuer acquires.* In the case of property that the issuer does not build itself—

(A) The issuer acquires the property pursuant to a purchase contract requiring the property to be specially built to the issuer's specifications,

(B) The property is delivered to the issuer more than 6 months after the date the contract is entered into, and

(C) The issuer has no reason to believe that the seller, giving the contract ordinary priority, could have delivered the property within 6 months after the date the contract is entered into.

(ii) *Property that the issuer builds.* In the case of property that the issuer builds itself—

(A) No more than 60 percent of the amount that, under general Federal income tax principles, is properly chargeable to or may be capitalized as part of the basis of the completed property is attributable to tangible personal property acquired by the issuer (such as components, raw materials, and other supplies),

(B) The property is completed more than 6 months after the date the issuer began building it, and

(C) The issuer, exercising due diligence, could not have completed the property within 6 months.

(4) *Definitions of real property and tangible personal property.* Local law definitions are not controlling for purposes of determining the meanings of "real property" and "tangible personal property" as used in this paragraph (f). For purposes of this paragraph (f), the following definitions apply:

(i) *Real property.* "Real property" means land and improvements thereto, such as buildings or other inherently permanent structures, including items that are structural components of such buildings or structures. In addition, "real property" includes interests in real property. For example, real property includes wiring in a building, plumbing systems, central heating or central air-conditioning systems, pipes or ducts, elevators or escalators installed in a building, paved parking areas, roads, wharves and docks, bridges, and sewage lines.

(ii) *Tangible personal property.* "Tangible personal property" means any tangible property except real property. In addition, "tangible personal property" includes interests in tangible personal property. For example, tangible personal property includes machinery that is not a structural component of a building, subway cars, fire trucks, automobiles, office equipment, testing equipment, and furnishings.

(5) *Definition of issuer.* For purposes of this paragraph (f) only, "issuer" generally means the entity that actually issues the issue (the "actual issuer"). If the proceeds of an issue are provided to a conduit borrower (as defined in § 1.2501–1(g)), the term issuer generally means the conduit borrower and does not include the actual issuer.

(6) *Examples.* The operation of this paragraph (f) is illustrated by the following examples:

*Example 1.* City *C* issued bonds to finance a new office building. *C* entered into a turnkey contract with developer *X* under which *X* agreed to provide *C* with a completed building on a specified completion date on land currently owned by *X*. Under the agreement, *X* held title to the land and building and assumed any risk of loss until the completion date, at which time title to the land and the building were transferred to *C*. No construction had been performed by the date that *C* and *X* entered into the agreement. All payments by *C* to *X* for construction of the building are construction expenditures because all the payments are properly capitalized as part of the basis of the building, but payments by *C* to *X* allocable to the acquisition of the land are not construction expenditures. Alternatively, if *X* had partially constructed the building prior to entering into the contract with *C*, only those payments by *C* for construction performed after the contract date would be construction expenditures.

*Example 2.* *P*, a public agency, issued bonds to finance the acquisition of a right-of-way and the construction of sewage lines through numerous parcels of land. The right-of-way was acquired primarily through *P*'s exercise of its powers of eminent domain. At the time the bonds were issued, *P* reasonably expected that it would take approximately 2 years to acquire the entire right-of-way because of the time normally required for condemnation proceedings. No expenditures for the acquisition of the right-of-way are construction expenditures because they are costs incurred to acquire an interest in real property. If 25 percent or less of the available construction proceeds are used to acquire the right-of-way, however, and the balance of the available construction proceeds are used for construction expenditures, the issue is a construction issue.

*Example 3.* City *D* issued bonds to finance new subway cars for its mass transit system.

The subway cars were custom built by *A* to *D*'s specifications in order to operate properly on the system. Before they entered into the acquisition agreement for the subway cars, *A* informed *D* that it would take in excess of 6 months to provide the completed cars because of the time needed to build or modify the cars to *D*'s specifications. The subway cars are constructed personal property. Payments by *D* for the subway cars are construction expenditures because they are properly capitalized as part of the basis of the subway cars. Alternatively, if *A* had informed *D* that it would only take 3 months to provide the completed cars but *D* requested that *A* delay delivery for 12 months until construction of a new portion of the system was completed, no payments for the subway cars would be construction expenditures.

*Example 4.* *U*, a public agency, issued bonds to finance a partial interest in a newly constructed power-generating facility. *U* contributed its ratable share of the cost of building the new facility to the joint entity that will own the facility. The joint entity is a 501(c)(3) organization. *U*'s contributions to the joint entity are construction expenditures in the same proportion that the total expenditures by the joint entity for the facility qualify as construction expenditures.

*Example 5.* City *E* issued bonds to finance the purchase of unimproved land and the cost of subsequent improvements to the land, such as grading and landscaping, necessary to transform it into a park. The costs of the improvements were properly chargeable to the basis of the land. Expenditures by *E* for the improvements to the land are construction expenditures, but expenditures for the acquisition of the land are not.

(g) *Reasonable retainage*—(1) *Definition.* "Reasonable retainage" means an amount retained by the issuer for reasonable business purposes relating to the property financed with the proceeds of the issue, such as to ensure or promote compliance with the terms of one or more construction contracts (e.g., "punch list" items). Retainage is not reasonable unless it is consistent with prudent business practice, but it need not be required by law. In order for retainage to be reasonable—

(i) The payee must concede that the amount retained is not yet payable (as with "punch list" items),

(ii) The construction contract must expressly provide for retainage, or

(iii) An actual dispute must have arisen regarding either completion of construction or payment, the matters in dispute must be set forth in writing, and the retainage amount must be held in escrow.

(2) *Five percent limitation.* Reasonable retainage as of the end of the fourth spending period may not exceed 5 percent of the excess of the available construction proceeds as of that date (including actual earnings up to the end of the fourth spending period) over any amount used to, or deposited into an escrow to be used to, redeem bonds under paragraph (m) of this section. Earnings that accrue after the end of the 2-year spending period are not part of available construction proceeds for purposes of the 5 percent limitation, but are part of available construction proceeds for all other purposes.

(h) *Available construction proceeds*—(1) *Definition.* Except as otherwise provided in this paragraph (h), "available construction proceeds" means the amount equal to the sum of the issue price of an issue, earnings on the issue price, earnings on any amounts in a reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, less the amount of the issue price deposited in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

(2) *Earnings on a reasonably required reserve or replacement fund.* Earnings on any reasonably required reserve or replacement fund (within the meaning of section 148(d)) are available construction proceeds only to the extent that those earnings accrue before the earlier of the date construction is substantially completed (as defined in paragraph (m)(4) of this section) or the date that is 2 years after the date of issue. On or before the date of issue, the issuer may elect under section 148(f)(4)(C)(vi)(IV) to exclude from available construction proceeds the earnings on any reasonably required reserve or replacement fund. If the election is made, the arbitrage rebate requirement of section 148(f)(2) applies to the excluded amounts from the date of issue.

(3) *Treatment of expected earnings*—(i) *Determination on issue date.* If the special election under paragraph (e)(2) of this section is made, for purposes of determining whether an issue is a construction issue under section 148(f)(4)(C)(iv) and paragraph (e) of this section, available construction proceeds include future earnings that the issuer reasonably expects as of the date of issue.

(ii) *Determination at end of spending periods.* Except as provided in paragraph (h)(3)(iii) of this section, for purposes of determining whether the spending requirements under section 148(f)(4)(C)(ii) and paragraph (c) of this section have been met as of the end of any semi-annual spending period (other than for purposes of the 5 percent limitation on reasonable retainage under section 148(f)(4)(C)(iii)(I) and paragraph (g)(2) of this section), available construction proceeds include actual earnings allocated to the issue as of the end of the spending period and future earnings that the issuer reasonably expects as of that date.

(iii) *Election to use date of issue reasonable expectations.* For purposes of determining whether the spending requirements have been met as of the end of each of the first three spending periods, the issuer may elect, on or before the date of issue, to include in available construction proceeds the amount of earnings that the issuer reasonably expects as of the date of issue for the entire 2-year spending period, in lieu of including actual earnings and expected earnings as of the end of each spending period.

(4) *One and one-half percent penalty in lieu of arbitrage rebate.* For purposes of the semi-annual spending requirements of section 148(f)(4)(C)(ii) and paragraph (c) of this section, available construction proceeds of a construction issue as of the end of any spending period are reduced by the amount of penalty in lieu of arbitrage rebate (under section 148(f)(4)(C)(vii) and paragraph (l) of this section) that the issuer has paid from available construction proceeds before the last day of the spending period.

(5) *Payments on purpose investments.* Available construction proceeds do not include payments received under any purpose investment or earnings on those payments.

(6) *Examples.* The operation of this paragraph (h) is illustrated by the following examples:

*Example 1.* City *F* issued bonds having an issue price of $10,000,000. *F* made the election under paragraph (e)(2) of this section to qualify the issue as a construction issue based on reasonable expectations as of the date of issue. *F* did not elect to determine the amount of earnings included in available construction proceeds on the basis of its reasonable expectations on the date of issue. *F* deposited all of the proceeds of the issue into a construction fund to be used for expenditures other than costs of issuance. *F* estimated on the date of issue that, based on reasonably expected expenditures and rates of investment, total earnings on the construction fund would be $800,000. As of the end of the first spending period, *F* had received $350,000 in earnings on the construction fund. Based on revised reasonably expected expenditures and rates of investment, *F* estimated that total additional earnings on the construction fund would be $600,000. As of the date of issue, the amount of available construction proceeds is $10,800,000. In order to qualify as a construction issue, *F* must reasonably expect on the date of issue that at least $8,100,000 (75 percent of $10,800,000) in the construction

fund will be used for construction expenditures. As of the end of the first spending period, the amount of available construction proceeds is $10,950,000. In order to meet the 10 percent spending requirement for the first spending period, *F* must have spent at least $1,095,000 of proceeds.

*Example 2.* The facts are the same as *Example 1,* except that *F* elected on the date of issue to determine the amount of earnings included in available construction proceeds on the basis of its reasonable expectations as of the date of issue. In addition, as of the end of the fourth spending period, *F* had received $1,100,000 in earnings. As of the end of each of the first three spending periods, the amount of available construction proceeds is $10,800,000. Thus, for example, in order to meet the 10 percent spending requirement at the end of the first spending period, *F* must have spent at least $1,080,000 of proceeds. In order to meet the spending requirement at the end of the fourth spending period, however, *F* must have spent all of the $11,100,000 of actual available construction proceeds (except possibly for a reasonable retainage amount not exceeding $555,000).

*Example 3.* City *G* issued bonds having an issue price of $11,200,000. *G* made the election under paragraph (e)(2) of this section to qualify the issue as a construction issue based on reasonable expectations as of the date of issue. *G* did not elect to determine the amount of earnings included in available construction proceeds on the basis of its reasonable expectations as of the date of issue, and did not elect to exclude earnings on the reserve fund from available construction proceeds. *G* used $200,000 of proceeds to pay issuance costs and deposited $1,000,000 of proceeds into a reasonably required reserve fund. *G* deposited the remaining $10,000,000 of proceeds into a construction fund to be used for construction expenditures. On the date of issue, *G* reasonably expected that, based on the reasonably expected date of substantial completion and rates of investment, total earnings on the construction fund would be $800,000, and total earnings on the reserve fund to the date of substantial completion would be $150,000. *G* reasonably expected that substantial completion would occur during the fourth spending period. On the date of issue, *G* reasonably expected to use $10,800,000 of proceeds for construction expenditures ($10,000,000 in the construction fund plus $800,000 of expected earnings on the construction fund). At the end of the first spending period, *G* had received $40,000 in earnings on the reserve fund and $350,000 in earnings on the construction fund, and estimated that, based on the reasonably expected date of substantial completion and rates of investment, total additional earnings on the reserve fund would be $140,000 and on the construction fund would be $600,000. As of the date of issue, the amount of available construction proceeds is $10,950,000 ($10,000,000 originally deposited into the construction fund plus $800,000 expected earnings on the construction fund and $150,000 expected earnings on the reserve fund). In order for the issue to qualify as a construction issue, *G* must reasonably expect on the date of issue that at least $8,212,500 in the construction fund will be used for construction expenditures. As of the end of the first spending period, the amount of available construction proceeds is $11,130,000 ($10,000,000 originally deposited in the construction fund plus $350,000 actual earnings on the construction fund, $600,000 expected earnings on the construction fund, $40,000 actual earnings on the reserve fund, and $140,000 expected earnings on the reserve fund). In order to meet the 10 percent spending requirement on that date, *G* must have spent at least $1,113,000 of proceeds.

*Example 4.* The facts are the same as *Example 3,* except that *G* elected, on or before the date of issue, to exclude earnings on the reserve fund from available construction proceeds. The amount of available construction proceeds as of the date of issue is $10,800,000, and as of the end of the first spending period is $10,950,000.

(i) *Refunding issues*—(1) *Definition.* "Refunding issue" has the meaning used in § 1.148–11(b)(1).

(2) *Refundings of construction issues.* Solely for purposes of section 148(f)(4)(C), a refunding of a construction issue by either a tax exempt or a taxable issue is not taken into account, and proceeds of the construction issue do not become proceeds of the refunding issue ("transferred proceeds"). Therefore, although proceeds of a construction issue may "transfer" to the refunding issue and become transferred proceeds of the refunding issue for other purposes of section 148 (see § 1.148–11), these proceeds continue to be treated as unspent available construction proceeds of the construction issue for purposes of section 148(f)(4)(C).

(3) *Example.* The operation of this paragraph (i) is illustrated by the following example.

*Example.* In 1992, City *H* issued a construction issue having an issue price of $10,000,000. In 1993, *H* issued a refunding issue and used the proceeds to immediately retire all of the 1992 bonds. As of the date of issue of the refunding issue, $5,000,000 of available construction proceeds of the refunded issue were unspent. For purposes of the 2-year construction exception, $5,000,000 of available construction proceeds of the refunded issue continue, after the refunding, to be unspent available construction proceeds of the refunded issue. In addition, the refunding issue is not a construction issue, and the use of proceeds of that issue to pay principal or interest on the refunded issue is not a construction expenditure of proceeds of either the refunded issue or the refunding issue.

(j) *Apportioning of multipurpose issues*—(1) *Portion of issue used for refunding treated as separate issue.* For purposes of section 148(f)(4)(C), if any portion of a multipurpose issue (as defined in § 1.148–11(c)(3)) is treated as a separate issue allocable to refunding purposes under § 1.148–11(j), that portion is treated as a separate refunding issue.

(2) *Election to treat portion of issue used for construction as separate issue*—(i) *In general.* For purposes of section 148(f)(4)(C), if any proceeds of an issue are to be used for construction expenditures, the issuer may elect to treat the portion of the multipurpose issue that is not a refunding issue under paragraph (j)(1) of this section as two, and only two, separate issues, if—

(A) One of the separate issues meets the definition of a construction issue in section 148(f)(4)(C)(iv) and paragraph (e) of this section,

(B) The issuer reasonably expects, as of the date of issue, that this construction issue will finance all of the construction expenditures to be financed by the multipurpose issue, and

(C) On or before the date of issue, the issuer makes an election to apportion the multipurpose issue under section 148(f)(4)(C)(v) that specifically identifies the amount of the issue price of the issue allocable to the construction issue.

(ii) *Limitation on use of nonconstruction issue for construction expenditures.* The Commissioner may treat as invalid any election under section 148(f)(4)(C)(v) and paragraph (j)(2) of this section if proceeds of the multipurpose issue that are not part of the construction issue (the "nonconstruction issue") are used for construction expenditures, unless the expenditure is a result of circumstances not reasonably foreseeable by the issuer as of the date of issue and is made after all available construction proceeds of the construction issue have been spent.

(3) *Example.* The operation of this paragraph (j) is illustrated by the following example.

*Example.* City *D* issued bonds having an issue price of $19,000,000. *D* made the election under paragraph (e)(2) of this section to determine qualification as a construction issue based on reasonable expectations as of the date of issue. On the date of issue, *D* reasonably expected to use $10,800,000 of bond proceeds (including investment earnings) for construction expenditures for the project being financed. *D* deposited $10,000,000 in a construction fund to be used for construction expenditures and $9,000,000 in an acquisition fund to be used for acquisition of equipment not qualifying as construction expenditures. *D* estimated on the date of issue, based on reasonably expected expenditures and rates of investment, that total earnings on the construction fund would be $800,000 and total earnings on the acquisition fund would be $200,000. *D* may elect on or before the date of issue to treat up to $13,333,333 of the issue price as a construction issue ($10,000,000 divided by .75) but may not treat less than $10,000,000 of the issue price as a

construction issue. D's election must specify the amount of the construction issue. The balance of the issue price is treated as a separate nonconstruction issue that is subject to the arbitrage rebate requirement of section 148(f)(2) unless it meets another exception to arbitrage rebate, such as the 6-month exception of section 148(f)(4)(B).

(k) *Accounting procedures*—(1) *In general.* Except as otherwise provided in this paragraph (k), all allocations made for purposes of section 148(f)(4)(C) must comply with the requirements of §§ 1.148–4 and 1.148–11. Examples of allocations that must comply with these requirements are allocations of available construction proceeds to expenditures and allocations between the construction, nonconstruction, and refunding issues of a multipurpose issue.

(2) *Earnings as of fourth spending period.* Accrued earnings allocable to the available construction proceeds of an issue that have not been actually or constructively received as of the end of the fourth spending period are deemed to have been spent if—

(i) On or before the end of the fourth spending period, the earnings are designated for a specific expenditure for the governmental purposes of the issue as evidenced by an entry on the issuer's books and records maintained for the issue, and

(ii) On or before the date that is 30 months after the date of issue, the expenditure is actually made, and the earnings are relieved from any restrictions under the relevant legal documents and applicable state law that apply only to unspent bond proceeds.

(3) *Allocation of issuance costs.* If the issuer makes the election under section 148(f)(4)(C)(v) and paragraph (j)(2) of this section to treat a multipurpose issue as a construction issue and a nonconstruction issue, the issuer must allocate all issuance costs paid out of proceeds of the multipurpose issue to the nonconstruction issue. If the issuer does not make an apportionment election, the issuance costs paid out of proceeds of the issue are treated as paid out of a separate nonconstruction issue, but no portion of the earnings on any reasonably required reserve or replacement fund are allocated to that nonconstruction issue.

(l) *One and one-half percent penalty in lieu of arbitrage rebate*—(1) *In general.* Under section 148(f)(4)(C)(vii), the issuer of a construction issue may elect, on or before the date of issue, to pay a penalty (the "1½ percent penalty") to the United States in lieu of the obligation to pay arbitrage rebate on available construction proceeds in the event that the issue fails to satisfy the spending requirements of section 148(f)(4)(C)(ii) and paragraph (c) of this section. An election of the 1½ percent penalty is not effective unless the issuer also makes the special election under paragraph (e)(2) of this section to qualify as a construction issue based upon reasonable expectations as of the date of issue. The 1½ percent penalty is calculated separately for each spending period, including any semi-annual spending period after the end of the fourth spending period, and is equal to 0.015 times the underexpended proceeds as of the end of the spending period. For each spending period, underexpended proceeds are computed by subtracting available construction proceeds spent for the governmental purposes of the issue by the end of the spending period from available construction proceeds required to be spent by the end of the spending period. No penalty is due if the underexpended proceeds are equal to or less than zero. The 1½ percent penalty ceases to apply only after the last maturity of bonds that are part of the issue, including bonds of any other issue that refunds bonds of the issue, unless the penalty is terminated under paragraph (m) of this section. The 1½ percent penalty must be paid to the United States no later than 90 days after the end of the spending period to which the penalty relates.

(2) *No reasonable expectations required.* In order to elect to pay the 1½ percent penalty in lieu of arbitrage rebate, the issuer of a construction issue is not required to reasonably expect that the issue will meet the spending requirements of section 148(f)(4)(C)(ii) and paragraph (c) of this section.

(3) *Application to reasonable retainage.* The 1½ percent penalty does not apply to unspent available construction proceeds as of the close of the fourth spending period and any spending period thereafter if the issue meets the exception for reasonable retainage described in section 148(f)(4)(B)(iii) and paragraph (c)(2) of this section. If the issue meets the exception for reasonable retainage except that all retainage is not spent within 36 months of the date of issue, then, within 90 days after the end of the 36-month period, the issuer is required to make payments of the 1½ percent penalty to the United States with respect to any reasonable retainage that was not spent as of the close of the fourth spending period and the spending periods ending 30 and 36 months after the date of issue. The 1½ percent penalty continues to apply at the end of each semi-annual spending period thereafter until the earliest of the following:

(i) The termination of the penalty under section 148(f)(4)(C)(viii) or (ix) and paragraph (m) of this section, except as provided in paragraph (m)(3) of this section;

(ii) The expenditure of all of the retainage; or

(iii) The last maturity of every bond that is part of the issue (including any bonds of another issue that refund bonds of the issue).

(4) *Coordination with arbitrage rebate requirement.* The arbitrage rebate requirement of section 148(f)(2) is treated as met for a period if a penalty for that period is paid in lieu of arbitrage rebate as provided in section 148(f)(4)(C)(vii), (viii), or (ix).

(m) *Termination of 1½ percent penalty in lieu of arbitrage rebate*—(1) *Termination of 1½ percent penalty after initial temporary period.* Under section 148(f)(4)(C)(viii), the issuer of a construction issue may terminate the 1½ percent penalty after the initial temporary period (as defined in paragraph (m)(5) of this section) if—

(i) Not later than 90 days after the earlier of the end of the initial temporary period or the date construction is substantially completed (as defined in paragraph (m)(4) of this section), the issuer elects to terminate the 1½ percent penalty

(ii) Within 90 days after the end of the initial temporary period, the issuer pays a penalty equal to 3 percent of the unexpended available construction proceeds determined as of the end of the initial temporary period, multiplied by the number of years (including fractions of years computed to 2 decimal places) in the initial temporary period;

(iii) As of the close of the initial temporary period, the unexpended amount is invested either in tax exempt bonds or in other investments at yields not exceeding the yield on the issue. This yield restriction requirement applies at all times, and no further temporary periods under section 148(c) are permitted, including but not limited to temporary periods for investment of proceeds; and

(iv) On the earliest date on which the bonds may be called or otherwise redeemed, the unexpended amount as of that date is used to redeem the bonds. The presence of any call premium or penalty does not prevent a date from being the earliest call date. This redemption requirement may be met by purchases of bonds by the issuer on the open market at prices not exceeding fair market value. A portion of the annual principal payment due on serial bonds of a construction issue may be paid from the unexpended amount, but only in an

amount no greater than the amount that bears the same ratio to the annual principal due that the total unexpended amount bears to the issue price of the construction issue.

(2) *Termination of 1½ percent penalty before end of initial temporary period.* Under section 148(f)(4)(C)(ix), if the construction to be financed by the construction issue is substantially completed before the end of the initial temporary period, the issuer may elect to terminate the 1½ percent penalty before the end of the initial temporary period if—

(i) Before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed, the issuer elects to terminate the 1½ percent penalty;

(ii) The election identifies the amount of available construction proceeds that will not be spent for the governmental purposes of the issue; and

(iii) The issuer has met all of the conditions for termination of the 1½ percent penalty described in paragraph (m)(1) of this section, applied as if the initial temporary period ended as of the date the election is made under paragraph (m)(2)(i) of this section. A penalty termination election under paragraph (m)(2)(i) of this section satisfies the penalty termination election requirement of paragraph (m)(1)(i) of this section.

(3) *Application to reasonable retainage.* Solely for the purposes of determining whether the conditions for terminating the 1½ percent penalty are met, reasonable retainage may be treated as spent for a governmental purpose of the construction issue. Reasonable retainage that is so treated continues to be subject to the 1½ percent penalty.

(4) *Date construction is substantially completed.* The "date construction is substantially completed" is either the date on which the issuer reasonably determines that the project financed with the proceeds of the construction issue is substantially complete or the date on which the issuer abandons the project. In no event is construction substantially completed, however, earlier than the date that the issuer has spent available construction proceeds on the project in an amount equal to at least 90 percent of the total costs of the project that the issuer reasonably expects, as of that date, will be financed with the proceeds of the construction issue. If the issuer abandons only a portion of the project, the date of substantial completion is the date that the non-abandoned portion of the project is substantially completed.

(5) *Initial temporary period.* "Initial temporary period" means the period described in section 148(c), except that the end of the initial temporary period is determined without regard to section 149(d)(3)(A)(iv).

(6) *Example.* The operation of this paragraph (m) is illustrated by the following example.

*Example.* City *I* issued a construction issue having a 20-year maturity and qualifying for a 3-year initial temporary period. The bonds were first subject to optional redemption 12 years after the date of issue at a premium of 3 percent. *I* elected, on or before the date of issue, to pay the 1½ percent penalty in lieu of arbitrage rebate. At the end of the 3-year temporary period, the project was not substantially completed, and $1,500,000 of available construction proceeds of the issue were unspent. *I* reasonably expected to need $500,000 to complete the project. *I* may terminate the 1½ percent penalty in lieu of arbitrage rebate with respect to the excess $1,500,000 by (1) electing to terminate within 90 days of the end of the initial temporary period, (2) paying a penalty to the United States of $135,000 (3 percent of $1,500,000 multiplied by 3 years), (3) restricting the yield on the unspent available construction proceeds for 9 years to the first call date, and (4) using the available construction proceeds that have not been spent for the governmental purposes of the issue to redeem bonds on the first call date. If *I* fails to make the termination election, *I* is required to pay the 1½ percent penalty on unspent available construction proceeds every 6 months until the latest maturity date of bonds that were part of the issue (including any bonds of another issue that refunds bonds of the issue).

(n) *Payment of penalties*—(1) *Rounding rule.* Each penalty payment under sections 148(f)(4)(C)(vii), (viii), and (ix) and paragraphs (l) and (m) of this section may be rounded down to the nearest multiple of $100. Thus, any amount less than $100 is rounded to zero.

(2) *Computation credit.* Each penalty payment may be reduced by a computation credit of $100.

(3) *Method.* A penalty or correction amount is paid under section 148(f)(4)(C) and this paragraph (n) when payment is made to the Internal Revenue Service. The penalty payment must be accompanied by the appropriate form.

(4) *Failure to pay*—(i) *Innocent failures.* A construction issue is treated as meeting the requirements for payment of a penalty under section 148(f)(4)(C)(vii), (viii), and (ix) and paragraphs (l) and (m) of this section notwithstanding an innocent failure to pay if the issuer pays the correction amount to the United States in the manner provided in paragraph (n)(4)(ii) of this section and within the time and in the manner permitted for correction of innocent failure to pay arbitrage rebate as provided in § 1.148–1T(c), excluding § 1.148–1T(c)(2)(ii). For this purpose, payment of a penalty is treated as a rebate payment.

(ii) *Payment of additional penalty in lieu of loss of tax exemption*—(A) *General rule.* A construction issue that (but for this paragraph (n)(4)(ii)) would fail to meet a requirement to pay a penalty under section 148(f)(4)(C)(vii), (viii), or (ix) because of a failure to pay a penalty in the required amount or within the required time is treated as meeting the requirement only if—

(*1*) The Commissioner determines that the failure is not due to willful neglect; and

(*2*) The issuer pays to the United States, no later than the date specified by the Commissioner in the determination, the correction amount plus an additional penalty equal to 50 percent of the sum of the penalty not paid when required plus interest on the penalty not paid when required for the period beginning on the date the penalty was required to be paid at the underpayment rate established under section 6621. For the purpose of determining the correction amount, § 1.148–1T(c)(2), excluding § 1.148–1T(c)(2)(ii), applies to this paragraph (n)(4)(ii), and a payment of penalty is treated as a payment of rebate.

(B) *Waiver by Commissioner.* The Commissioner may waive all or any part of the additional penalty under this paragraph (n)(4)(ii).

(iii) *Effect of failure to pay.* Bonds that are part of an issue for which there is a failure to pay any required penalty amount under sections 148(f)(4)(C)(vii), (viii), and (ix) and paragraphs (l) and (m) of this section (and any bonds of another issue that refund those bonds) are treated as never having been described in section 103(a).

(o) *Pooled financing bonds*—(1) *Definition.* Bonds are "pooled financing bonds" if the issuer reasonably expects on the date of issue to provide the proceeds of the bonds to 2 or more conduit borrowers (as defined in § 1.150–1(g)).

(2) *In general.* Under section 148(f)(4)(C)(xi), at the election of the issuer of a construction issue of pooled financing bonds, the periods for the spending requirements set forth in section 148(f)(4)(C)(ii) and paragraph (c) of this section are determined separately for each loan to a conduit borrower and the spending period for a loan begins on the earlier of the date the loan is made, or the first day following the 1-year period beginning on the date of issue of the pooled financing bonds. If the issuer

of the pooled financing bonds makes this election, the arbitrage rebate requirements of section 148(f)(2) apply to, and the 2-year construction exception of section 148(f)(4)(C) is not available for, available construction proceeds of the pooled financing bonds prior to the date on which the spending period for those proceeds begins under the preceding sentence.

(3) *Spending requirements.* If the issuer of a construction issue makes the election under section 148(f)(4)(C)(xi) and paragraph (o)(2) of this section, the spending requirements set forth in section 148(f)(4)(C)(ii) and paragraph (c) of this section apply separately to each loan to a conduit borrower. If the issuer makes this election but does not make the election to pay the 1½ percent penalty in lieu of arbitrage rebate under section 148(f)(4)(C)(vii) and paragraph (l) of this section, the arbitrage rebate requirements of section 148(f)(2) apply to the available construction proceeds of the entire issue unless each loan meets the spending requirements. If the issuer makes the election to pay the 1½ percent penalty in lieu of arbitrage rebate, the 1½ percent penalty must be paid for each loan in the manner and at the times required by section 148(f)(4)(C)(vii) and paragraph (l) of this section.

(4) *Apportionment of loans.* Notwithstanding paragraph (j) of this section, if the issuer of pooled financing bonds makes the election under section 148(f)(4)(C)(v) and paragraph (j)(2) of this section, the issuer is not required to specifically identify the amount of the multipurpose issue that is treated as a separate construction issue in the election made on or prior to the date of issue. For a loan made to a conduit borrower from the pool within 1 year of the date of issue, the issuer must, on or before the date the loan is made, supplement the election by specifically identifying the amount of the loan that is part of the separate construction issue. For available construction proceeds that have not been loaned within 1 year of the date of issue, the issuer must, on or before the date that is 1 year after the date of issue, supplement the election by specifically identifying the amount of those proceeds that is part of the separate construction issue of the multipurpose issue. For purposes of section 148(f)(4)(C)(iv) and paragraph (e) of this section, each pool loan is treated as a separate issue, and, if the special election under paragraph (e)(2) of this section is made, reasonable expectations as to the portion of the loan to be used for construction expenditures are determined as of the date of the pool loan. Except as otherwise provided in this paragraph (o)(4), the requirements of sections 148(f)(4)(C)(v) and (xiii)(II) and paragraph (j) of this section relating to apportionment apply to each loan rather than to the issue.

(5) *Termination of 1½ percent penalty in lieu of arbitrage rebate.* Notwithstanding paragraph (m) of this section, the issuer of a pooled financing bond may elect to terminate the 1½ percent penalty in lieu of arbitrage rebate for a loan rather than the entire issue. If the issuer so elects, the requirements of sections 148(f)(4)(C)(viii) and (ix) and paragraph (m) of this section apply to each loan (as if it were a separate issue), rather than to the issue.

(6) *Other elections.* All other elections permitted under section 148(f)(4)(C) and paragraphs (c) through (q) of this section must be made by the issuer with respect to the entire issue.

(7) *Examples.* The operation of this paragraph (o) is illustrated by the following examples:

*Example 1.* On January 1, 1992, Authority *J* issued bonds. *J* made the election under paragraph (e)(2) of this section to qualify as a construction issue based on reasonable expectations as of the date of issue. As of the date of issue, *J* reasonably expected to use the proceeds of the issue to make loans to City *K* and to County L, and also reasonably expected that more than 75 percent of the available construction proceeds of the issue would be used for construction expenditures, but did not reasonably expect that more than 75 percent of the available construction proceeds in each loan would be used for construction expenditures. On or before the date of issue, *J* elected that the spending periods for each loan begin on the earlier of the date the loan is made and the first day following the 1-year period beginning on the date of issue. On February 1, 1992, *J* loaned a portion of the available construction proceeds to *K*. On March 1, 1993, *J* loaned the remainder of the available construction proceeds to *L*. For the loan to *K*, the first spending period ends on July 31, 1992, and the available construction proceeds loaned to *K* are subject to the arbitrage rebate requirements of section 148(f)(2) for the period prior to the loan (January 1, 1992 through January 31, 1992). For the loan to *L*, the first spending period ends on July 1, 1993, and the available construction proceeds loaned to *L* are subject to the arbitrage rebate requirements of section 148(f)(2) for the 1-year period starting on the date of issue. The issue is a construction issue, but each loan must meet its spending requirements in order for the available construction proceeds of the issue to be excepted from the requirement to pay arbitrage rebate.

*Example 2.* The facts are the same as *Example 1* except as stated below. On the date of issue, *J* reasonably expected that 50 percent of the available construction proceeds of the issue would be used for construction expenditures and elected to treat a portion of the issue as a separate construction issue, but did not specify the amount of the issue price to be treated as a separate construction issue. For the available construction proceeds loaned to *K*, *J* must specify the amount of the loan that is treated as part of the separate construction issue on or before February 1, 1992. For the remaining available construction proceeds, *J* must specify, on or before January 2, 1993, the amount of those proceeds that are treated as part of the separate construction issue.

(p) *Election out of 2-year construction exception.* An issuer may elect on or before the date of issue that a construction issue not be subject to the 2-year construction exception to arbitrage rebate. This election results in the issue being subject to all other provisions of section 148(f).

(q) *Elections*—(1) *In general.* Any election made by an issuer under section 148(f)(4)(C) or paragraphs (c) through (q) of this section is irrevocable and must be evidenced by a written entry in the books and records of the issuer maintained for the issue and must comply with any filing requirements promulgated by the Internal Revenue Service. An election under this section must be made by the governing body of the issuer or by an officer of the issuer responsible for issuing the issue. Except for elections under sections 148(f)(4)(C)(viii) and (ix) and paragraph (m) of this section and under § 1.148–0T(b)(6)(ii) and except as provided in paragraph (q)(2) of this section, any election for an issue under this section must be made on or before the date of issue.

(2) *Transition rule for certain elections.* If an issuer makes the election for an issue under § 1.148–0T(b)(6)(ii), the issuer may make the elections under paragraphs (h)(3)(iii) and (e)(2) of this section on or before the date that the election under § 1.148–OT(b)(6)(ii) is made.

(3) *Procedural requirements.* An election under this section must satisfy the requirements of § 1.148–8T(h)(2).

(4) *Extension of time.* The Commissioner may extend the time to make the elections under paragraphs (h)(3)(iii) and (e)(2) of this section if the requirements of §§ 1.148–8T(h)(3)(ii) (A) and (B) are satisfied.

**David G. Blattner,**

*Acting Commissioner of Internal Revenue.*

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## Bad Debt Reserves of Thrift Institutions; Correction

**AGENCY:** Internal Revenue Service.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking (FI-42-90), which was published in the **Federal Register** on January 13, 1992 (57 FR 1232). The proposed regulations relate to the thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by section 593 of the Internal Revenue Code (Code).

**FOR FURTHER INFORMATION CONTACT:** Bernita L. Thigpen, (202) 566-3297 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The notice of proposed rulemaking that is the subject of these corrections provides guidance for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by Internal Revenue Code section 593. The proposed regulations set forth rules on changing from and returning to this method of accounting, and the proposed regulations provide procedures for complying with these rules. These proposed regulations are issued under the authority of Internal Revenue Code sections 446 and 481.

### Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the publication of proposed regulations (FI-42-90), which was the subject of FR Doc. 92-697, is corrected as follows:

**§ 1.593-13 [Corrected]**

1. On page 1239, column 1, § 1.593-13(c)(5), line 1 of the *Example*, the language "*Example 1.* Thrift institution T, a calendar" is corrected to read "*Example.* Thrift institution T, a calendar".

**§ 1.593-14 [Corrected]**

2. On page 1242, column 3, § 1.593-14(d)(6), line 4 of paragraph (i) of *Example 1*, the language "Pursuant to § 1.593-13(c)(2), in 1992 R restates" is corrected to read "Pursuant to § 1.593-13(c)(2), T restates".

3. On page 1242, column 3, § 1.593-14(d)(6), line 2 of paragraph (ii) of *Example 1*, the language "§ 1.591-14(d)(2)(i) is $560,000 and is not lower" is corrected to read "§ 1.593-14(d)(2)(i) is $560,000 and is not lower".

4. On page 1243, column 1, § 1.593-14(d)(6), paragraph (ii) of *Example 3*, last line of that column, the language "Under the principles of § 1.593-14d(4)(iv)," is corrected to read "Under the principle of § 1.593-14(d)(v),".

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-3213 Filed 2-11-92; 8:45 am]

BILLING CODE 4830-01-M

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 335**

**[DoD Instruction 5030.AA]**

## Defense Mapping Agency (DMA) Mapping, Charting, and Geodesy (MC&G) Data; Public Availability and Exceptions

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule defines applicability and terms, establishes policy, assigns responsibilities, and prescribes procedures regarding the public availability of DoD mapping, charting, and geodesy data in the Defense Mapping Agency inventory. This regulation implements 10 U.S.C. 2796.

**DATES:** Written comments on this proposed rule must be received by March 13, 1992.

**ADDRESSES:** Forward comments to the Office of Deputy Assistant Secretary of Defense (Intelligence), Director, Requirements and Analysis, room 3C200, Pentagon, Washington, DC 20301-3040.

**FOR FURTHER INFORMATION CONTACT:** Dennis Moellman, (703) 695-1830.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 32 CFR Part 335

Freedom of Information.

Accordingly, title 32, subchapter P is proposed to be amended to add part 335 to read as follows:

## PART 335—DEFENSE MAPPING AGENCY (DMA) MAPPING, CHARTING, AND GEODESY (MC&G) DATA; PUBLIC AVAILABILITY AND EXCEPTIONS

Sec.

335.1 Purpose.
335.2 Applicability.
335.3 Definitions.
335.4 Policy.
335.5 Responsibilities.
335.6 Procedures.

**Authority:** 10 U.S.C. 2794 and 2796.

**§ 335.1 Purpose.**

This part:

(a) Establishes policy, assigns responsibilities, and prescribes procedures in accordance with 10 U.S.C. 2796 and 32 CFR part 360 for the release and withholding of otherwise unclassified DMA MC&G data in the possession of, or under the control of, the Department of Defense.

(b) Authorizes the publication of DoD 5030.AA-M,[1] "Use and Release of Defense Mapping Agency (DMA) Mapping, Charting, and Geodesy (MC&G) Data," in accordance with DoD 5025.1-M.[2]

**§ 335.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments (including their National Guard and Reserve components), the Chairman of the Joint Chiefs and Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

**§ 335.3 Definitions.**

(a) *Defense Mapping Agency Mapping, Charting and Geodesy Data.* The term includes the total inventory of DMA MC&G materials, whether produced by the DMA or obtained under contract, international agreement, or other bilateral or multilateral arrangement, but does not include architectural and engineering site plans. It is synonymous with the terms maps, charts, and geodetic data and geodetic products used in 10 U.S.C. 2794 and 2796.

(b) *Limited Distribution.* Distribution limited to the Department of Defense, U.S. DoD contractors, and to U.S. Government Agencies supporting DoD functions, and that is made under the authority of the Director, DMA.

(c) *Mapping, Charting and Geodesy (MC&G).* Comprises the collection, transformation, generation, dissemination, and storing of geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data. These data may be

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[1] Copies will be available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies are available, at cost, from the National Technical Information Service.

used for military planning, training, and operations including aeronautical, nautical, and land navigation, as well as for weapon orientation and target positioning. MC&G also includes the evaluation of topographic, hydrographic, or aeronautical features for their effect on military operations or intelligence. The data may be presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

**§ 335.4 Policy.**

It is DoD policy that:

(a) The DMA shall offer for sale to the public maps and charts and other MC&G data at scales of 1:500,000 and smaller. Exceptions are maps and charts and other MC&G data withheld in accordance with paragraph (b) of this section, or those specifically authorized under criteria established by E.O. 12356 to be classified in the interest of national defense or foreign policy and are, in fact, properly classified under such E.O. Sales may be made by the DMA directly or through its authorized agents.

(b) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any MC&G data in the possession of, or under the control of, the Department of Defense that:

(1) Was obtained or produced, or that contains information that was provided under an international agreement that restricts disclosure of such product or information to government officials of the agreeing parties or that restricts use of such product or information to government purposes only,

(2) Contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods used to obtain source material for production of the MC&G data, or

(3) Contains information that the Director of the DMA has determined in writing would, if disclosed, reveal military operational or contingency plans.

(c) DMA MC&G data, withheld from the public under paragraph (b) of this section, may, nevertheless, be released to allies of the United States and to qualified U.S. contractors under the following conditions:

(1) MC&G data received from foreign governments under an international agreement may only be disclosed outside the DoD in accordance with the terms of the international agreement.

(2) MC&G data described in paragraph (b)(2) of this section, may be released to U.S. allies and qualified U.S. contractors in accordance with applicable treaties, international agreements, 32 CFR part 250, 48 CFR chapter 1, 48 CFR chapter 2, DoD 5220.22-R [3], DoD Instructions 0-5230.22 [4], National Disclosure Policy (NDP-1) [5], DoD 5220.22-M [6], and 32 CFR part 159a.

(d) Prices for the sale of DMA MC&G data shall be determined in accordance with 10 U.S.C. 2794 and DoD 7220.9-M [7].

**§ 335.5 Responsibilities.**

(a) The Assistant Secretary of Defense for Command, Control, Communications and Intelligence shall:

(1) Implement the DoD responsibilities contained in 10 U.S.C. 2796.

(2) Make the determinations required in § 335.4(b)(2). This responsibility may not be redelegated.

(3) Promulgate a Manual, in accordance with DoD 5025.1-M, for the use and release of MC&G data in the possession or under the control of the DoD.

(b) The Director, Defense Mapping Agency shall:

(1) Establish regulations for the public sale of DoD MC&G data in accordance with 10 U.S.C. 2794.

(2) Make the determinations required in section 335.4(b)(3).

(3) Implement the determinations made under section 335.4(b).

(4) Mark each product "Limited Distribution," which is withholdable under § 335.4(b).

(c) The Heads of other DoD Components shall:

(1) Establish policies or procedures to implement this program within their Components.

(2) Refer all Freedom of Information Act requests for unclassified DoD MC&G data marked with the legend "Limited Distribution," "DISTRIBUTION LIMITED—DESTROY WHEN NO LONGER NEEDED," "For Official Use Only," or other similar or restrictive caveats to the Director, DMA.

**§ 335.6 Procedures.**

(a) Unclassified DoD MC&G materials marked with the legend "Limited Distribution," "DISTRIBUTION LIMITED—DESTROY WHEN NO LONGER NEEDED," "For Official Use Only," or any other similar or restrictive caveats are presumed to be withholdable under this Instruction. DoD Components having such materials in their possession shall not release them outside the DoD without prior approval of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence or the Director, DMA.

(b) Requests received under 5 U.S.C. 552 for unclassified restrictively marked DoD MC&G materials shall be forwarded to the Director, DMA for action.

Dated: February 5, 1992.

**L.M. Bynum,**

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

[FR Doc. 92-3084 Filed 2-11-92; 8:45 am]

BILLING CODE 3810-01-M

[3] See footnote 2 to § 335.1(b).

[4] For official use only. Not releasable to the public.

[5] Available from the Office of the Director for International Security Programs, Office of the Deputy Under Secretary for Security Policy.

[6] Copies may be obtained, at cost, from Superintendent of Documents, Government Printing Office, Washington, DC 20402.

[7] See footnote 2 to § 335.1(b).

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1035

**[Ex Parte No. 495]**

### Bills of Lading

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rule; stay of comment due date until further notice.

**SUMMARY:** By a notice of proposed rulemaking published in the **Federal Register** on December 30, 1991, 56 FR 67269, the ICC proposed to vacate its prescription of railroad and water carrier uniform bills of lading and livestock contracts. Comments were requested by February 13, 1992. Transportation Claims and Prevention Council, Inc. (TCPC) and National Grain and Feed Association (NGFA), have filed petitions requesting that we extend the comment period.

**DATES:** This stay of comment period is February 12, 1992.

**SUPPLEMENTARY INFORMATION:** Transportation Claims and Prevention Council, Inc. (TCPC) has filed a letter petition arguing that: (1) In 1935, motor carriers were ordered to conform to railroad bills of lading; (2) removal of the railroad bills of lading prescription may affect motor carrier bills of lading, as it would rail and water carrier bills of lading; and (3) the shipping community has not been given adequate notice of the potential impact. TPCP requests a new order to explain the possible impact of the instant proposal on motor carrier

bills of lading, and that we extend the comment deadline. Alternatively, TCPC asks that the Commission institute an additional proceeding to consider these issues and set simultaneous comment due dates for both proceedings.

National Grain and Feed Association (NGFA), also has filed a petition to extend the comment by 60-days. According to NGFA, the present regulations and prescriptions of uniform bills of lading have been in place for most of this century and the prospect of revoking the regulations creates substantial uncertainty for shippers. The NFGA believes that an extension will permit shippers and carriers to discuss the necessity for the present regulations at its annual convention in March and generate more substantive comments regarding the proposed rulemaking.

The February 13th comment deadline is stayed pending Commission action on the petitions.

Decided: February 7, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary

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

*Secretary.*

[FR Doc. 92-3362 Filed 2-11-92; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 57, No. 29
Wednesday, February 12, 1992

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

### Office of the Assistant Secretary for Food and Consumers Services

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Assistant Secretary for Health

### National Nutrition Monitoring Advisory Council: Notice of Meeting

**SUMMARY:** The National Nutrition Monitoring Advisory Council will hold its first meeting on February 26, 1992, 9 a.m. to 4:30 p.m. and February 27, 1992, 9 a.m. to 1 p.m. in the U.S. Department of Agriculture's Administration Building, Conference Room 107A, between 12th and 14th Streets on Independence Avenue, SW., Washington, DC 20250. The meeting is open to the public. However, the meeting is contingent upon timely chartering of the Council.

**FOR FURTHER INFORMATION CONTACT:** Alanna J. Moshfegh, Co-Executive Secretary to the Council from USDA, Human Nutrition Information Service, U.S. Department of Agriculture, 6505 Belcrest Road, room 366, Hyattsville, MD 20782, (301) 436-8457; or Linda Meyers, Ph.D., Co-Executive Secretary to the Council from DHHS, Public Health Service, Office of Disease Prevention and Health Promotion, room 2132, Switzer Building, 330 C Street SW., Washington, DC 20201, (202) 472-5307.

**SUPPLEMENTARY INFORMATION:** The National Nutrition Monitoring Advisory Council was established by Executive Order of the President on January 25, 1991, pursuant to Public Law 101-445, the National Nutrition Monitoring and Related Research Act of 1990. The Council will evaluate the scientific and technical quality of the comprehensive plan and the effectiveness of the coordinated program, provide guidance to the Secretaries of USDA and DHHS, and recommend areas for improvement of the program in annual reports to the Secretaries of both Departments.

The Council consists of nine voting members—five appointed by the President and four appointed by Congress. Members appointed by the President are David L. Call, Dean, College of Agriculture and Life Sciences, Cornell University, Ithaca, New York, for a four-year term; Shiriki K. Kumanyika, Associate Professor, Pennsylvania State University, University Park, Pennsylvania, for a three-year term; Suzanne S. Harris, Director, Human Nutrition Institute, International Life Sciences Institute, Washington, DC, for a three-year term; Charles H. James, III, President and Chief Executive Officer, C.H. James & Company, Charlestown, West Virginia, for a two-year term; Helen E. Lee, Instructor, Foothill College, Los Altos Hills, California, for a two-year term. Members appointed by Congress include Sue Greig, Adjunct Professor, Kansas State University, Manhattan, Kansas, for a five-year term. The remaining three members are to be appointed by the President pro tempore of the Senate, and the Speaker and the minority leader of the House of Representatives.

The Council meeting agenda will include an overview of the National Nutrition Monitoring and Related Research Program and discussion of the proposed Ten-year Comprehensive Plan for the National Nutrition Monitoring and Related Research Program. The public may file statements with the Council before or after the meeting by addressing them to either of the contact persons listed above.

Done at Washington, DC, this 5th of February 1992.

Steve Abrams,

*Deputy Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.*

J. Michael McGinnis, M.D.,

*Deputy Assistant Secretary for Health, U.S. Department of Health and Human Services.*

[FR Doc. 92-3339 Filed 2-11-92; 8:45 am]

BILLING CODE 3410-KE-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Draft Supplement to a Final Environmental Impact Statement for the Accelerated Engelmann Spruce Harvest for the Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales on the McCall Ranger District of the Payette National Forest, Valley and Idaho Counties, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplement to an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Environmental Impact Statement previously prepared for the Accelerated Engelmann Spruce Harvest for the Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales (August 1991). The supplement will focus on the results of revised biological evaluations prepared in accordance with Forest Service Manual 2670.32 for all sensitive species that may occur within the project area. The evaluations will clearly analyze the effects on those species by assessing the impacts of the proposed project and cumulative effects on population viability, numbers, and distribution.

Since 1989, considerable scoping, public meetings, and analyses were completed in response to this proposal. Specific public meetings were held in May, 1989, which were designed to explain and receive comments on the projects involved. These meetings and the continued scoping precipitated a large number of comments from the public, Federal, State, and local agencies.

Due to the extensive scoping and public participation that has already occurred, the Forest Supervisor determined there is no need for additional scoping prior to the release of the DSFEIS. Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), specifically 40 CFR 1502.9(c)(4), allow agencies to exclude scoping when preparing supplements to environmental impact statements. The Forest Supervisor has, however, decided

to accept written comments for fifteen days after the Environmental Protection Agency's publishing of this Notice of Intent in the **Federal Register.**

The agency will accept written comments and suggestions on the scope of the analysis. However, because the Forest has been communicating with interested persons concerning the scope of the proposed project throughout the environmental analysis process, the agency urges that any comments be concise and specific to the focus of the supplement. Comments directed to the substance, rather than the scope of the proposed project, would be more appropriately submitted during the comment period following release of the Draft Supplement to the Final Environmental Impact Statement.

**DATES:** Comments on the scope of the analysis must be received by February 29, 1992.

**ADDRESSES:** Submit written comments and suggestions concerning the scope of the analysis to Linda Fitch, McCall District Ranger, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action should be directed to the District Ranger.

**SUPPLEMENTARY INFORMATION:** The Payette National Forest Supervisor released the Final Environmental Impact Statement for the Accelerated Engelmann Spruce Harvest for the Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales and the Record of Decision to approve the timber sales on August 22, 1991. The Idaho Conservation League appealed the decision on September 27, 1991. After reviewing the appeal, the Intermountain Regional Forester reversed the Forest Supervisor's decision on appeal point number one regarding sensitive species and affirmed the Forest Supervisor on all other appeal issues.

The Regional Forester directed the Forest Supervisor to complete biological evaluations on all sensitive species that may occur within the project area in accordance with Forest Service Manual 2670.32 by clearly analyzing the effects on those species and by assessing the impacts of the proposed project and cumulative effects on population viability, numbers, and distribution. The Regional Forester also directed that the Forest Supervisor prepare the results as a supplement to the environmental impact statement and make the supplement available to the public for review and comment.

Scoping for the project was initiated in May, 1989, when public scoping meetings were held in McCall and Boise, Idaho. A notice of intent to prepare an environmental impact statement appeared in the **Federal Register** in January 1991 (56 FR 1789). A Draft Environmental Impact Statement was released in June 1991.

The Draft Supplement to the Final Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and be available for public review on March 1, 1992. At that time the Environmental Protection Agency will publish a notice of availability of the Draft Supplement in the **Federal Register.**

The comment period on the Draft Supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested participate at that time. To be the most helpful, comments on the Draft Supplement should be as specific as possible and address the adequacy of the supplement.

Comments on the Draft Supplement will be analyzed and considered by the Forest Service in preparing the Final Supplement, which is scheduled to be completed by April 16, 1992. The Forest Service is required to respond to the comments received (40 CFR 1503.4). After reviewing the supplement along with any public comments on the supplement, the Forest Supervisor will then determine if the original decision should be amended. If the original decision does not require amendment, the Forest Supervisor may proceed with the project without issuing a new Record of Decision. If the Forest Supervisor determines that the decision should be amended, the decision and reasons supporting it will be documented in a new Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this action.

Dated: February 6, 1992.

**Veto J. LaSalle,**

*Forest Supervisor.*

[FR Doc. 92-3296 Filed 2-11-92; 8:45 am]

BILLING CODE 3410-11-M

## Packers and Stockyards Administration

### Posting of Stockyard; S&J Villari Livestock, Gumboro, DE; Correction

On February 3, 1992, a notice was published in the **Federal Register** (55 FR 147) giving notice of the posting for certain stockyards listing their facility number, name and location.

This notice is to correct the facility number assigned to S&J Villari Livestock, Gumboro, Delaware.

DE-102, S&J Villari Livestock, Gumboro, Delaware, December 18, 1991.

Done in Washington, DC, this 6th day of February, 1992.

**Harold W. Davis,**

*Director, Livestock Marketing Division, Packers and Stockyards Administration.*

[FR Doc. 92-3246 Filed 2-11-92; 8:45 am]

BILLING CODE 3410-20-M

## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

### Action Affecting Export Privileges; Yuzo Oshima, The Sound You Company, Ltd., Tatsuno-Nishitenma Building, 3-1-6, Nishitenma, Kita-ku, Osaka, Japan; Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (199)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (1991)) (Act),[1] has Yuzo Oshim (Oshima) and The Sound You Company, Ltd. (Sound You). The initial order was issued on February 11, 1991 (56 FR 7007, February 21, 1991). A second order was issued on August 8, 1991 extending the denial of export privileges for an additional period of 180 days (56 FR 40599, August 15, 1991).

In its renewal request of January 15, 1992, the Department stated that it continues to have reason to believe that an order temporarily denying the export privileges of Oshima and Sound You is necessary in the public interest to prevent an imminent violation of the Regulations.

In its initial request, the Department stated that, as a result of its investigation, the Department had reason believe that, during the period February 20, 1990 to February 5, 1991, Oshima and Sound You were trying to obtain near state-of-the-art Intel CPU-386 microprocessors, controlled for reasons of national security, so that they

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 17091-1706 (1991))

could export that equipment from the United States to North Korea, a country against which the United States has a virtually complete embargo, without first obtaining the required validated license. There is a presumption that a license application to ship the CPU-386 microprocessors to North Korea would not be granted.

The Department also started that the investigation had given it reason to believe that Oshima and Sound You intend to effectuate the export of the Intel CPU-386 microprocessors from the United States by sending them to third countries and then reexporting them to North Korea. The Department also had reason to believe that Oshima and Sound You are capable of bringing about such exports because it believed that Oshima and Sound You have access to large sums of money and that, given the opportunity, they would use that money in the near future to acquire the CPU-386 microprocessors and export them through other countries to North Korea.

In its renewal request, the Department stated that nothing the Department has learned since the time of its initial and subsequent request has given it reason to believe that its initial suspicions were inaccurate. Indeed, the Department noted that, since the initial request, the Department has received information that gives it reason to believe that a TDO is still necessary and appropriate.

Specifically, the Department stated that Oshima originally informed Intel (the manufacturers of the CPU-386s) that it wanted the CPU-386s for export to North Korea, but subsequently changed his story, saying he wanted to export the CPU-386 to, *inter alia*, two end users in Taiwan. The Department further stated that, since the issuance of the original TDO, it has obtained information which gives it reason to believe that story was false. The Department further believes that Oshima provided the false information to the Department because he wanted to obtain the CPU-386s under the guise that they were going to be exported to Taiwan, when in fact he really intended to ship them to North Korea as he had originally planned.

In addition, in its initial request, the Department noted that, on February 6, 1991, it had initiated administrative proceedings against Oshima and Sound You. Those matters are presently before the office of the Administrative Law Judge.

Nevertheless, in light of the above-described events and those described in the Department's initial request, the Department continues to believe that the violations Oshima and Sound You are suspected of having committed were deliberate and covert and are likely to occur again unless the temporary denial order naming Oshima and Sound You is renewed. In addition, the Department believes that, pending resolution of the administrative actions the Department has initiated against Oshima and Sound You, renewal of temporary denial order is necessary to give notice to companies in the United States and abroad that they should cease dealing with Oshima and Sound You in transactions involving U.S.-origin goods.

On January 27, 1992, this office received "Respondent's Opposition to the Second Request for the Renewal of the Temporary Denial Order." That opposition reiterates a number of points raised by the respondent in previous submissions and exhibits filed in this case. The following are three major points raised in the respondent's submission:

First, the respondent claims that it never intended to violate U.S. Export Administration Regulations when it entered into negotiations with Intel over the export of the CPUs from the United States to North Korea. However, the record to date indicates otherwise. Department's February 8, 1991 Request for the Issuance of an Order Temporarily Denying Export Privileges (hereinafter "Department's Original Request") at 2-4. Second, the respondent alleges that it discontinued negotiations with Intel over the sale after discovering a legal transaction was not possible. In fact, the record to date indicates that the respondent understood the transaction in question was illegal no later than March 13, 1991. Further, it was only after three months of ongoing negotiations on the sale, during which the respondent repeatedly attempted to circumvent the law, was the transaction suspended. *See* Department's Original Request at 3-4, exhibits 1, 3, 5, 6, 7-10. Third, the respondent contends that there is no evidence that their decision to ship the CPUs to Taiwan and Singapore was anything but a "legitimate switchover of business policies." Again, the record includes evidence about the transaction in question that suggests that Taiwan and Singapore were not meant to be the ultimate end users of this equipment. I also note that any failure of the Department to prove that these transactions were designed to illegally circumvent COCOM restrictions does not undermine the Department's allegations regarding the respondent's original intent to export CPUs illegally to North Korea.

Based on the showing made by the Department and my close review of the respondent's opposition paper, I find that an order temporarily denying the export privileges of Yuzo Oshima and The Sound You Company, Ltd. is necessary in the public interest to prevent an imminent violation of the Act and Regulations and to give the notice to companies in the United States and abroad to cease dealing with Yuzo Oshima and the Sound You Company, Ltd. in goods and technical data subject to the Acts and the Regulations, in order to reduce the substantial likelihood that Yuzo Oshima and The Sound You Company, Ltd. will continue to engage in activities that are in violation of the Act and the Regulations.

Accordingly, it is hereby

*Ordered*

I. All outstanding individual validated licenses in which Oshima or Sound You appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Oshima's and Sound You's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from the date of entry of this order, Yuzo Oshima and The Sound You Company, Ltd., both with an address at Tatsuno-Nishitenma Building, 3-1-6, Nishitenma, Kitaku, Osaka, Japan, and all successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in an transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations. Without limiting the generality f the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filling with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodity or technical data exported or to be

exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c), any person, firm, corporation, or business organization related to Oshima and/or Sound You by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. Without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States, (b) in any reexport thereof, or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit from or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: February 4, 1992.

**Douglas E. Lavin,**

*Acting Assistant Secretary for Export Enforcement.*

[FR Doc. 92-3230 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-DT-M

## Economics and Statistics Administration

### Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009

**AGENCY:** Economics and Statistics Administration, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009. The meeting will convene on Friday, March 6, 1992, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and eight *ex officio* members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 Census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

**DATES:** The meeting will begin at 9:30 a.m. and adjourn at 4:30 p.m. on Friday, March 6, 1992.

**ADDRESSES:** The meeting will take place at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Office of the Under Secretary, Economics and Statistics Administration, Department of Commerce, room 4838, Herbert C. Hoover Building, Washington, DC 20230. Telephone: (202) 377-3709.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include consideration of possible design features and options for the 2000 census and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named below at least three working days prior to the meeting.

Dated: January 28, 1992.

**Mark W. Plant,**

*Acting Under Secretary and Acting Administrator, Economics and Statistics Administration.*

[FR Doc. 92-2542 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-EA-M

## International Trade Administration

[A-122-601]

### Brass Sheet and Strip From Canada; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by the petitioners and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers Wolverine Tube (Canada) Inc. (Wolverine), a manufacturer of this merchandise, and the period January 1, 1990 through December 31, 1990, during which time Wolverine had no shipments of the subject merchandise to the United States. As a result of this review, the Department preliminarily finds that Wolverine is the successor company to Noranda Metals Inc. and, as such, should receive the antidumping duty cash deposit rate previously assigned to NMI of 21.32 percent *ad valorem*.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Beth Chalecki, Anne D'Alauro, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 17, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 1793) of the antidumping duty order on brass sheet and strip from Canada (52 FR 1217; January 12, 1987) for the period January 1, 1990 through December 31, 1990. On January 31, 1991, one of the respondents, Ratcliffs/Severn Ltd., requested an administrative review of the antidumping duty order for itself, and the petitioners, American Brass, et al., requested a review of the Canadian manufacturer, Wolverine. We initiated the review on February 19, 1991 (56 FR 6621). Ratcliffs/Severn Ltd. has since been revoked from the order (56 FR 57317; November 8, 1991). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Review**

Imports covered by this review are shipments of brass sheet and strip, other than leaded brass and tin brass, currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. The chemical compositions of the products under review are currently defined in the Copper Development Association (CDA) 200 series or the Unified Numbering System (UNS) C2000 series. Products whose chemical compositions are defined by other CDA or UNS series are not covered by this review. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer of this merchandise, Wolverine, and the period January 1, 1990 through December 31, 1990. The other manufacturer, Ratcliffs/Severn Ltd., which requested a review for itself on January 31, 1991, has since been revoked from this order.

**Sales**

Wolverine made no shipments of the subject merchandise to the United States during the period of review.

**Successorship**

In October 1988, Wolverine purchased the brass sheet and strip facility of Noranda Metals, Inc., (NMI). For the 1988 review period, NMI was assigned a cash deposit rate of 21.32 percent *ad valorem*. (See Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Canada (55 FR 31414; August 2, 1990).) Prior to acquiring the NMI plant, Wolverine was not a producer of brass sheet and strip and was never reviewed under this order.

For purposes of assigning Wolverine a cash deposit rate, the Department is concerned with the consequences of the acquisition of the NMI plant in the proper administration of the antidumping laws. (See Final Results of Antidumping Duty Administrative Review of Brass Sheet and Strip from Canada and Revocation In Part of Antidumping Duty Order (58 FR 57318; November 8, 1991) (hereinafter Brass Sheet and Strip Final Results); see also *NIEL* v. *United States*, 739 F. Supp. 1567, 1574 (CIT 1990).) In this review, we have examined whether Wolverine is the successor company to NMI in the production and sale of brass sheet and strip and, as such, should receive NMI's cash deposit rate, rather than the "all other" rate which would otherwise be assigned to a company never reviewed under this order.

In determining whether a company is the successor company pursuant to an acquisition, the Department takes into account a number of factors, such as, but not limited to, changes in management, production facilities, suppliers, and customer base. (See, e.g., Brass Sheet and Strip Final Results, at 57318–19; Steel Wire Strand for Prestressed Concrete from Japan; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review (55 FR 7759, 7759–60; March 5, 1990); Large Power Transformers from Italy: Final Results of Antidumping Duty Administrative Review (52 FR 46806, 46810; December 10, 1987).)

Generally, the Department will consider the acquiring company to be a successor if its resulting operation is essentially similar to that of its predecessor. (See id.) Thus, unless the company demonstrates that it operates as a substantially different business entity from the one it acquired, the Department will assign it the cash deposit rate of its predecessor, which will remain in effect until completion of an administrative review of its own U.S. sales transactions.

The record in this review indicates that Wolverine acquired NMI's entire business complex, inclusive of physical plant, equipment, and personnel; that production continued virtually uninterrupted since the time of the acquisition; that Wolverine continued to supply essentially the same customer base it acquired from NMI (except for U.S. customers); and that the majority of the managers operating the plant under NMI continued to perform the same functions under Wolverine's ownership. Under these circumstances, the Department finds that, concerning production and sales of brass sheet and strip, Wolverine is operating essentially as the same business entity as NMI, and, therefore, for antidumping duty cash deposit purposes, should receive the rate assigned to NMI.

**Preliminary Results of the Review**

We preliminarily conclude that, for purposes of establishing Wolverine's antidumping duty cash deposit rate, Wolverine is the successor to NMI, and is, therefore, assigned the 21.32 percent *ad valorem* antidumping duty cash deposit rate previously assigned to NMI.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than ten days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs, or the first workday thereafter. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date (with the exception of those by manufacturer/exporter Ratcliffs/Severn Limited, which has been revoked from the order), as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous

reviews or the initial less-than-fair value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to Wolverine or any other previously-reviewed firm, will be the "all others" rate of zero established in the final results of the last administrative review. (See Brass Sheet and Strip Final Results.)

We are relying on the final results of the last administrative review for purposes of the "all others" rate since the sole company in this review, Wolverine, had no shipments. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 6, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-3386 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-DS-M

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[A-429-601]

## Solid Urea From the German Democratic Republic; Initiation of Changed Circumstances Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of changed circumstances antidumping duty administrative review.

**SUMMARY:** On October 3, 1990 the German Democratic Republic and the Federal Republic of Germany were unified into a single jurisdiction of the Federal Republic of Germany. We are initiating a changed circumstances review to examine the effect of unification on the antidumping duty order from the German Democratic Republic, specifically its applicability to post unification shipments of the subject merchandise from producers located in the pre-unification area of the Federal Republic.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 14, 1987, the Department of Commerce (Department) published in the **Federal Register** (53 FR 2636) an antidumping duty order on solid urea from the German Democratic Republic (GDR), establishing a cash deposit rate of 44.80 percent. On October 3, 1990, the GDR and the Federal Republic of Germany were unified into a single jurisdiction of the Federal Republic of Germany (FRG). On October 10, 1990, the Department issued a new case number designation for the antidumping duty order on solid urea from the GDR and instructed the U.S. Customs Service to suspend liquidation of all entries of solid urea from the FRG. U.S. Customs officials were also instructed to collect cash deposits on manufacturers located in what was the German Democratic Republic and to not collect cash deposits from any company located in what was the pre-unification territory of the FRG.

There have been shipments of solid urea since the date of unification from companies located in the pre-unification territory of the FRG. The Department is initiating this review to determine whether the order on solid urea from the GDR is applicable to shipments by producers located in the pre-unification territory of the FRG. If we determine that the order is applicable, we will also determine what cash deposit, if any, is applicable to these shipments.

The unification of the GDR and the FRG are changed circumstances sufficient to warrant a changed circumstances antidumping duty administrative review on solid urea from the GDR, pursuant to 19 CFR 353.22(f).

We are hereby notifying the public of our intent to initiate a changed circumstances antidumping duty administrative review on solid urea from the GDR. We are also inviting interested parties to comment on the above and on any other relevant issue(s) which are associated with the foregoing.

This notice is published in accordance with section 751b of the Tariff Act of 1930, 19 U.S.C. 1673(e) and 19 CFR 353.22(f).

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-3387 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-DS-M

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[A-401-603]

## Stainless Steel Hollow Products From Sweden; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by respondents Sandvik AB, AB Sandvik Steel, and Sandvik Steel Co., the Department of Commerce has conducted an administrative review of the antidumping duty order on stainless steel hollow products from Sweden. The review covers one manufacturer/exporter of this merchandise to the United States, and the period December 1, 1989, through November 30, 1990. The review indicates the existence of a dumping margin for the respondent during the administrative review period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States prices and foreign market values.

Interested parties are invited to comment on these preliminary results of review.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 377-5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 12, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (55 FR 51139) of the antidumping duty order on stainless steel hollow products from Sweden (52 FR 45985; December 3, 1987). On December 18, 1990, respondents Sandvik AB, AB Sandvik Steel, and Sandvik Steel Co. (collectively "Sandvik") requested a review of the antidumping duty order. We initiated the review,

covering the period December 1, 1989, through November 30, 1990, on January 30, 1991 (56 FR 3445). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final determination of sales at less than fair value was published on October 9, 1987 (52 FR 37810), and amended on December 3, 1987 (52 FR 45985).

The Department verified the sales questionnaire response of Sandvik Steel Co., in Scranton, Pennsylvania on October 22–24, 1991, and the cost questionnaire response on October 21–23, 1991. The Department verified the sales questionnaire response of Sandvik GmbH in Dusseldorf, Germany on October 29–31, 1991, and the sales questionnaire response of AB Sandvik Steel in Sandviken, Sweden on November 4–6, 1991. The Department verified the cost questionnaire response of AB Sandvik Steel in Sandviken, Sweden on November 4–8, 1991.

**Scope of the Review**

The merchandise covered by this review is seamless stainless steel hollow products including pipes, tubes, hollow bars, and blanks of circular cross section, containing over 11.5 percent chromium by weight. This merchandise is currently classified under subheadings 7304.41.00 and 7304.49.00 of the Harmonized Tariff System (HTS).

The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**United States Price**

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act of 1930, as amended (the Act). PP and ESP were based on the packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, inland insurance, ocean or air freight, marine insurance, brokerage and handling, import duty, repacking, all U.S. freight and insurance, rebates, royalties, warranties, credit, and selling expenses. We also deducted indirect selling expenses, which included Sandvik's reported indirect selling expenses, plus product liability insurance, inventory carrying costs, and commissions. We allowed deductions, where appropriate, for discounts. (All reported unit prices were net of discounts).

In addition to the aforementioned deductions, we deducted value added in the United States pursuant to section 772(e)(3) of the Act for sales involving further manufacture in the U.S. (The Department considered all such sales to be ESP sales.) The value added consists of the production costs incurred in converting an imported redraw hollow into a finished pipe or tube, the expenses incurred in the sale of the finished pipe or tube, and a proportional amount of profit or loss related to the value added. We calculated profit or loss by deducting from the sales price of the finished pipe or tube:

1. The production cost of the redraw hollow;
2. The finishing costs in the U.S.; and
3. All expenses incurred in transporting the redraw hollow into the United States.

We then allocated proportionately the total profit or loss to the imported redraw hollow and the finished pipe or tube based on the proportion of the total cost of production accounted for by the production cost of the redraw hollow and the further manufacturing cost, respectively. We deducted only the profit or loss attributable to the U.S. value added.

We have determined that further manufacturing costs included: (1) The cost of manufacture (labor and overhead cost; there is no material cost since the pipe or tube is made from the imported redraw hollow); (2) movement charges; and (3) general expenses, including selling, general, and administrative expenses. We adjusted the manufacturing costs submitted by Sandvik as follows:

(1) Factory overhead was revised to reflect year-end adjustments;

(2) General and administrative costs were revised to include the U.S. holding company expenses, and allocated based on cost of sales rather than sales value; and

(3) Interest expense was revised by basing it on consolidated financial statements.

**Foreign Market Value**

In order to determine whether there were sufficient sales of SSHP in the home market to serve as a basis for calculating foreign market value (FMV), we compared the volume of home market sales to the aggregate volume of third country sales, in accordance with section 773(a)(1) of the Act. We have determined that there are three such or similar categories: (1) Pipes and tubes; (2) redraw hollows; and (3) hollow bars. During this review period, Sandvik sold only pipes and tubes in the U.S. It also imported redraw hollows for further manufacture. The volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, we based FMV for sales of pipes and tubes and redraw hollows on third country sales. See 19 CFR 353.48.

In selecting the appropriate third country market to use for comparison purposes, we first determined which third country markets had "adequate" volumes of sales within the meaning of 19 CFR 353.49(b)(1). We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded or were equal to five percent of the volume sold in the United States. We selected the third country market with the largest volume of sales, and whose organization and development is most like that of the U.S., as the most appropriate market for comparison, in accordance with 19 CFR 353.49(b)(2) and 19 CFR 353.49(b)(3). Therefore, for sales of both pipe and tubes and redraw hollows, we based FMV on Sandvik's sales to Germany.

In this review, petitioners alleged that Sandvik sold pipes and tubes and redraw hollows in the German market below their cost of production. Based on the evidence presented in petitioner's allegations, the Department initiated COP investigations on this merchandise.

We based the cost of production on the cost data supplied by Sandvik, and the findings obtained at the cost verifications held in Scranton, Pennsylvania, and in Sandviken, Sweden. Sandvik adjusted its cost data to conform with generally accepted accounting principles (GAAP) used in the United States. The company's cost records are based on Swedish GAAP, while its financial statement conforms to U.S. GAAP. Under Swedish GAAP, production costs must include imputed interest, and depreciation must be based on replacement cost. Sandvik adjusted its cost data by replacing imputed interest with actual interest expenses and by substituting depreciation based on replacement costs with historical depreciation costs. In addition, the Department made the following changes to Sandvik's cost data:

(1) It based the cost of manufacturing on the variable costs Sandvik submitted in the difference in merchandise section of its questionnaire response, but increased them to account for fixed overhead.

(2) The calculated variances were revised to reflect the average standard cost rather than the average sales price.

(3) G & A costs were revised to reflect costs incurred by the steel subsidiaries and parent company which were not reflected in the questionnaire response. Furthermore, G & A costs were allocated based on a cost of sales amount which was reflected in the financial statements.

The results of our cost test showed that more than ten percent but less than ninety percent of German sales were below the cost of production. Thus, we dropped out of our dumping margin calculations all German sales below the cost of production. Where there were no identical German models to use for comparison to a U.S. sale, we looked for a similar model, making an appropriate difference in merchandise adjustment. Where there were no similar German models to use for comparison to a U.S. sale of a particular model, we calculated the dumping margin by use of that model's U.S. constructed value. For U.S. sales for which no constructed value information was available, the Department used the mean margin of all sales as the best information available.

We calculated FMV based on the C.I.F. and delivered prices to unrelated customers in Germany. We made deductions, where appropriate, for inland freight from Sweden to Germany, inland insurance, brokerage and handling, German inland freight to the customer, repacking expenses in Germany, royalties, selling expenses, and rebates. We also allowed deductions for discounts. (Sandvik reported the German prices net of discounts). We deducted Swedish packing from the third country price and added U.S. packing to the third country price, in accordance with section 773(a)(1) of the Act. For ESP sales, we deducted credit from both U.S. and third country price. For PP sales we made a circumstance of sale adjustment in accordance with 19 CFR 353.56(a)(2) by deducting credit from the third country price, and adding U.S. credit to the third country price.

For ESP sales and sales involving U.S. manufacturing, we adjusted third country prices for indirect selling expenses, which included Sandvik's reported indirect selling expenses, plus the cost of product liability insurance and inventory carrying expenses. We capped the deduction for third country indirect selling expenses by the amount of indirect selling expenses incurred in the U.S. market, in accordance with 19 CFR 353.56(b)(2). We made further adjustments to third country prices to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(c) of the Act.

We denied Sandvik's claimed adjustment for warranty expenses because Sandvik included more than just warranty expenses in its adjustment. In a supplemental questionnaire, the Department requested that Sandvik break out the warranty expenses from the non-warranty expenses, but Sandvik declined to do so because of the time it would take.

Sandvik claims that in accordance with 19 CFR 353.55 the Department should, wherever possible, compare U.S. sales to German sales of the same quantity range, and that wherever this is not possible the Department should make a quantity discount adjustment. To support its claim, Sandvik submitted its sales price list for ex-stock sales. These lists have the form of a "quantity extra" schedule, i.e., a pricing scheme in which progressively smaller quantities are charged a progressively larger unit price. Along with these price lists, Sandvik submitted the average mark-up for each quantity bracket smaller than the base (largest) quantity bracket. Sandvik requested that the quantity adjustment be based on these mark-ups.

The Department has determined that the evidence on the record does not justify either comparing only similar quantities or making a quantity discount adjustment. In reviewing Sandvik's sales prices, the Department has found numerous listings of sales from different quantity brackets of the same model, channel of distribution, and level of trade for which the sale from the higher quantity bracket has a higher unit price than the sale from the smaller quantity bracket. Such sales are inconsistent with Sandvik's quantity extra schedule. Therefore, in calculating these preliminary results, we have not compared U.S. sales only with German sales of the same quantity, nor have we made a quantity discount adjustment.

In both Germany and the U.S. market, Sandvik sells the subject merchandise out of inventory (ex-stock sales) or produces to order and ships directly from the production site to the customer (ex-mill sales). Sandvik argues that, whenever possible, the Department should compare sales made through the same channel of distribution, and when not possible, it should make a "warehouse mark-up" adjustment to reflect the higher costs of selling products ex-stock. Sandvik claims that the costs include carrying inventory, running and maintaining the Dusseldorf warehouse, and additional customer services such as cutting tube to length. However, Sandvik makes its adjustment claim based on the difference in average price between a mix of 32 identical models sold both ex-stock and ex-mill in Germany.

It is the Department's practice to make circumstance of sale adjustments based on cost, not price. See, e.g., Portable Electric Typewriters from Japan, Final Results of Antidumping Duty Administrative Review, 52 FR 1504, 1511 (Jan. 14, 1987). 19 CFR 353.56(a)(2) provides: "Differences in circumstances of sales for which the Secretary will make reasonable allowances normally are those involving differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing." These difference are all based on actual costs. The Department normally will not accept differences in prices as a basis for adjustment because prices can be influenced by factors not related to the differences in circumstances of sale, such as shifts in demand and pricing strategy. In this case, the cost differences that would be accounted for in any such adjustment are already reflected in the indirect selling expense adjustment. Thus, there is no need to compare ex-stock sales to ex-stock sales, or ex-mill sales to ex-mill sales, nor to make a "warehouse mark-up" adjustment.

Sandvik claims that during the review period it imposed an alloy surcharge on most of its sales in Germany. This alloy surcharge was used to offset the fluctuating price of nickel and ferrochrome, two inputs in the production of the subject merchandise. The alloy surcharge applied to each sale was the surcharge in place at the time of shipment to the customer. Sandvik argues that the Department should make an adjustment for the alloy surcharge as a difference in merchandise adjustment under 19 CFR 353.57, even when comparing identical merchandise. In the alternative, they state that the Department should make the adjustment as a circumstances of sale adjustment under 19 CFR 353.56.

Under 19 CFR 353.57, the Department is not allowed to make adjustments for differences in the cost of production when comparing merchandise with identical physical characteristics. Furthermore, with respect to the adjustment as a circumstance of sale adjustment, the Department stated in Brass Sheet and Strip from Germany, Final Results of Antidumping Duty Administrative Review, 56 FR 60087, 60089 (Nov. 27, 1991), "(c)ircumstances of sale adjustments are normally only allowed for differences in selling expenses being compared, not differences in raw material costs, and would therefore be inappropriate in this case." For this same reason, we have disallowed Sandvik's claimed adjustment for the alloy surcharge.

Furthermore, Sandvik reported in its sales prices the alloy surcharge in effect on the date of sale, rather than the alloy surcharge actually billed to the customer on the date of invoice. We have asked

Sandvik to supply us with the actual surcharge billed to the customer. For these preliminary results, we have used as the best information available (BIA) the highest surcharge charged on any sale during the period of review.

Sandvik made a claim for a level of trade adjustment on sales in Germany under 19 CFR 353.58. We disallowed this claimed adjustment because Sandvik did not demonstrate that it incurred different indirect selling expenses on sales to different levels of trade in the German market. However, as is our established practice, we compared, where possible, distributor sales in the United States to distributor sales in Germany, and end-user sales in the United States to end-user sales in Germany.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that a margin of 6.89 percent exists for Sandvik AB for the period December 1, 1989, through November 30, 1990. Interested parties may request disclosure and/or an administrative protective order within five days of the date of publication of this notice and may request a hearing within eight days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of administrative review, including an analysis of issues raised in any written comments or at the hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of stainless steel hollow products from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Sandvik AB will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this or prior reviews or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the most recent review for which it received a rate, or, if not covered in this or an earlier review, the rate from the less than fair value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm, will be 6.89 percent. This is the most recent non-BIA rate for any firm in this proceeding.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This administrative review and notice are in accordance with section 751(a)(1) of the Act and section 353.22(c)(5) of the Department's regulations.

Dated: February 6, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-3388 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-DS-M

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## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of issuance of an Export Trade Certificate of Review (Application No. 91-00007).

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to the National Association of Energy Service Companies ("NAESCO"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificate of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trade Trading Company Affairs is issuing this notice pursuant to 15 CFR part 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register** under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

*Description of Certified Conduct:*

**Export Trade**

*1. Products*

Equipment instrumentation and supplies for: (1) Auditing and Measuring energy use in residential, commercial, industrial, and government facilities, including (a) meters for measuring foot candle and kWh, (b) auditing machines (for example bar code); (2) installing, maintaining and monitoring energy management systems (EMS) in order to conserve energy through more efficient control of lighting, refrigeration, heating, ventilation, air conditioning, electric motors, and thermal energy storage systems, including master control units, remote terminal units, current transducers, computer hardware for EMS (for example user interfaces, modems), computer software for EMS; (3) using energy management systems to measure the savings that are achieved as a result of the installation of energy conservation measures, including metering equipment, and submetering equipment; (4) lighting systems and the equipment used for the installation, maintenance and monitoring of lighting systems, including high efficiency bulbs (incandescent, fluorescent, high pressure sodium and metal halide), screw-in fluorescent or compact fluorescent bulbs and lamps, high efficiency fluorescent exit signs, natural light prisms, wiring, wiring connections for lighting, lighting dusters; (5) energy efficient modifications for refrigeration systems (commercial and industrial), including liquid line condensers, liquid pressure amplifiers, compressors; (6) equipment used to modify heating, ventilation and air conditioning (HVAC) systems including energy management systems (EMS) (for example, to control chillers, heat pumps, furnaces, boilers, fans and thermostates), ductwork, air handling units, variable frequency drivers, fans,

diffusers; (7) installing, maintaining, and monitoring efficient electric motors for commercial and industrial uses, such as air handling system's components, compressors/chillers, machine tools, blowers and fans, including variable speed drives (mechanical and electronic), high efficiency electric motors; (8) installing weatherization and insulation measures in residential, commercial, industrial and government facilities, including wall, ceiling, and attic insulation (for example cellulose and fiberglass), water heater blankets and boiler insulation, rubber, sponge rubber, metal, and wood weather stripping, maintaining, monitoring and measuring the energy consumption of Thermal Energy Storage (TES) systems, including cooling plants, cooling tower storage tanks, ice harvesters, heat exchangers, condenser pumps, chilled water pumps, ductwork, air handling units, VAV boxes, fans, diffusers, variable frequency drives, U heaters; (10) general and technical energy service information and publications; and (11) all other products related to energy service development and production.

*2. Services*

Engineering design, and other services related to: (1) identification, conceptual prefeasibility, and feasibility assessment of residential, commercial, and industrial conservation programs for home owners, businesses, companies, utilities, or foreign governmental entities; (2) engineering studies, final design, and installation of energy conservation measures and programs; (3) project and construction management of energy conservation measure installations; (4) arranging or offering financing for investments in energy conservation measures, including lease, municipal lease, loan shared savings arrangements, chauffage, guaranteed lease, third party financing; (5) proving bonded performance guarantees that guarantee a certain level of energy savings as a result of the installation of energy service and conservation measures; (6) marketing energy conservation services to residential, commercial, industrial, and foreign government customers; (7) providing ongoing monitoring and maintenance of energy service and conservation equipment installation; (8) measuring the savings that are achieved as a result of the installation of energy conservation measures; (9) servicing, training, and other services related to the sale, use, installations, maintenance monitoring, rehabilitation or upgrading of Products or to projects that substantially incorporate Products; and (10) all other products related to energy service development.

*3. Technology Rights*

Patents, trademarks, service marks, trade names, copyrights, trade secrets, technical expertise, utility models, hydrologic and hydraulic physical and computer modeling, industrial designs and computer software protection associated with Products, Services, or Export Facilitation Services.

*4. Export Trade Facilitation Services (As They Relate to the Export of Products, Services and Technology Rights*

Consulting, such as product manufacture, engineering and construction; international market research; marketing and trade promotion; trade show participation; trade missions and reverse trade missions; financing for projects or support services; legal assistance; accounting assistance; services related to compliance with customs requirements, transportation, trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; government policy formulation; taking title to goods and liaison with foreign and domestic government and multinational agencies, trade associations and banking institutions.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Members (in Addition to Applicant)*

CES/Way International, Inc. of Houston, TX; Energy Investment, Inc. of Boston, MA; Kenetech Energy Management of Burlington, MA; Northeast Energy Services, Inc. of Framingham, MA; SYCOM Enterprises of Washington, DC.

**Export Trade Activities and Methods of Operation**

To engage in Export Trade in the Export Markets, NAESCO and/or one or more of its Members may undertake the following activities:

1. Engage in joint selling arrangements in export market countries for the sale of Products and/or Services in the Export Markets, such as joint marketing negotiation, offering, bidding and financing; and allocate sales resulting from such arrangements.

2. Establish export prices for sales of Products and/or Services by the Members in the Export Markets.

3. Discuss and agree on interface specifications, engineering and other technical Products and/or Services of specific export customers or Export Markets.

4. Refuse to quote prices for, or to market or sell, Products and Services in the Export Markets.

5. Solicit non-Member Suppliers from the United States and abroad (a) to sell their Products and/or Services, or (b) to offer their Export Trade Facilitation Services through the certified activities of NAESCO and/or the Members.

6. Coordinate with respect to the development of projects in Export Markets, such as project identification, scientific and technical assessment, engineering, design, maintenance, monitoring, construction and delivery, installation and construction, project ownership, project operation and transfer of project ownership; establish joint warranty service centers establishing operation and maintenance services for energy service facilities, parts warehousing, training centers and support services related to the foregoing.

7. Engage in joint promotional activities aimed at developing existing or new Export Markets, such as advertising, demonstrating, field trips, trade missions, reverse trade missions and conferences; and bring together, from time to time, groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

8. Establish and operate joint ventures and/or jointly owned entities, such as for-profit corporations and partnerships and/or other joint venture entities owned exclusively by Members, for the purpose of engaging in the Export Trade Activities and Methods of Operation herein described. NAESCO and/or one or more of its Members may establish and operate joint ventures for operations and projects in Foreign Markets with non-Members, including (a) public sector foreign corporations and other foreign governmental entities, and/or (b) private-sector foreign entities such as corporations. Non-Members engaging in such activities shall not receive protection under this Certificate of Review.

9. Provide Export Trade Facilitation Services as an exclusive or non-exclusive Export Intermediary for the Members whereby NAESCO and/or one or more of the Members may:

a. arrange to have NAESCO and/or one or more of the Members and/or non-members to act as an exclusive or non-exclusive Export Intermediary for the Members;

b. establish an entity owned jointly and exclusively by Members to act as an exclusive or non-exclusive Export Intermediary for the Members;

c. enter into exclusive arrangements with an Export Intermediary, which arrangement may provide that such Export Intermediary may not represent any non-Member Supplier of Products and/or Services in specified Export Markets; and Members may agree that they will not export independently into specified Export Markets either directly or through any other Export Intermediary or other party; and

d. act as an Export Intermediary negotiating and concluding licenses and sublicenses of Technology Rights which are consistent with paragraph 16, below.

10. Agree that any information obtained pursuant to this Certificate shall not be provided to any non-Member.

11. Act as a shippers association to negotiate favorable transportation rates and other terms for the transport of Products, with individual ocean common carriers and individual shipping conferences.

12. Jointly establish and/or negotiate with purchasers regarding specifications for Products and/or Services, on a country-by-country basis for the Export Markets.

13. Exchange and discuss the following types of information about Export Trade, Export Markets, Export Trade Activities and Methods of Operation, and the agreements related thereto:

a. information (other than information about Technology Rights, costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. information about sales, marketing, and opportunities for sales of Products and/or Services in the Export Markets; selling strategies for the Export Markets; prices and pricing; projected demands (quality and quantity); customary terms of sale; the types of Products and/or Services available from competitors for sales; market strengths and economic business conditions in the Export Markets;

c. information about the export prices, quality, quantity, sources, available capacity to produce, and delivery dates of Products available from Members for export;

d. information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by NAESCO and the Members;

e. information about joint bidding, selling, or servicing arrangements for the Export Markets and allocation of sales resulting from such arrangements among the Members;

f. information about expenses specific to exporting Products and Services to the Export Markets, such as expenses related to transportation, intermodal shipments, insurance, inland freight to port, port shortage, commissions, export sales documentation, financing, customs, duties, and taxes;

g. information about U.S. and foreign legislation, regulations and policies and executive actions affecting the sales of Products and/or Services in the Export Markets, such as U.S. Federal and State programs affecting the sale of Products and/or Services in the Export Markets or foreign policies which could affect the sale of Products and/or Services; and

h. information about NAESCO's or the Members' export operations, including without limitation, sales and distribution networks established by NAESCO or the Members in the Export Markets, and prior export sales by Members, such as export price information;

i. information necessary to the conduct of Export Trade, Export Trade Activities and Methods of Operation in the Export Markets; and

j. information on the organization, governance, financial condition and membership of NAESCO.

14. Forward inquiries to the appropriate individual Members concerning requests for information received from a foreign government or its agent, such as that Member's domestic and export activities, including prices and/or costs. If such Member elects to respond, that Member may respond directly to the requesting foreign government or its agent with respect to such information. Information relating to the domestic prices and/or costs of an individual Member may be relayed only by such Member directly to the requesting foreign government or its agent.

15. Forward inquiries such as inquiries about foreign policy related to privatization or rural electrification, to a foreign government or its agent; and responses to such inquiries from a foreign government or its agent to the appropriate Member(s).

16. Individually license and sub-license Technology Rights in the Export Markets to non-Members. Such licenses and sub-licenses may:

a. convey exclusive or non-exclusive rights in the Export Markets;

b. impose requirements as to the prices at which Products and/or Services incorporating or manufactured, or produced, using Technology Rights may be sold or leased in the Export Markets;

c. impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in the Export Markets;

d. restrict licensees and sub-licensees as to the field of use, or maximum sales or operations, in the Export Markets;

e. impose territorial restrictions relating to any Export Market on foreign licensees and sub-licensees;

f. require the assignment back or exclusive or non-exclusive grant back to the licensor Member of rights in the Export Market to all improvements in Technology Rights, whether or not such improvement falls within the field of use authorized in such license;

g. require package licensing of Technology rights; and

h. require products and or services (including but not limited to Products and/or Services) to be used, sold, or leased as a condition of the license of Technology Rights.

17. Refuse to provide Export Trade Facilitation Services or participation in Export Trade, Export Trade Activities and Methods of Operation to non-Members.

18. Individually purchase Products and/or Services for export to the Export Markets.

19. Enter into agreements whereby one or more Members, or an entity owned jointly and exclusively by Members, will provide transportation services to Members, such as the chartering and space chartering of vessels, the negotiation and utilization of intermodal rates with common and contract carriers for inland freight transportation for export shipments to the United States export terminal, port or gateway.

20. Meet to engage in the Export Trade, Export Trade Activities and Methods of Operation certified herein.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: February 6, 1992.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92-3304 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-DR-M

**University of California, Riverside, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Material Importation Act of 1966 (Public Law 69–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number:* 91–115. *Applicant:* University of California, Riverside, Riverside, CA 92521. *Instrument:* Chlorophyll Fluorescence Measuring System. *Manufacturer:* Heinz Walz GmbH, Germany. *Intended Use:* See notice at 56 FR 41120, August 19, 1991. *Reasons:* The foreign instrument provides 10.0 μs resolution for pulse modulated time-resolved chlorophyll fluorescence measurements. *Advice Submitted by:* National Institutes of Health, December 18, 1991.

*Docket Number:* 91–116. *Applicant:* Research Foundation for Mental Hygiene at New York State Psychiatric Institute, New York, NY 10032. *Instrument:* Ultrasound Signal Processor. *Manufacturer:* Ultra Sound Advice, United Kingdom. *Intended Use;* See notice at 56 FR 41121, August 19, 1991. *Reasons:* The foreign instrument provides digital frequency conversion of ultrasonic animal calls (20 to 40 kHz) so that they may be recorded and analyzed by conventional acoustic techniques used for the audible frequency range. *Advice Submitted By:* National Institutes of Health, December 18, 1991.

*Docket Number:* 91-128. *Applicant:* Rutgers University, New Brunswick, NJ 08903. *Instrument:* Micromanipulators. *Manufacturer:* Narishige Scientific, Japan. *Intended Use:* See notice at 56 FR 47187, September 18, 1991. *Reasons:* The foreign instrument provides low viscosity hydraulic control for isolation from vibrational or electrical interference. *Advice Submitted By:* National Institutes of Health, January 14, 1992.

*Docket Number:* 91–133. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Microvolume Stopped-Flow Spectrofluorimeter. *Manufacturer:* Hi-Tech, United Kingdom. *Intended Use:* See notice at 56 FR 50095, October 3, 1991. *Reasons:* The foreign instrument provides: Small sample (80–100 μl) capability, (2) dead time of 1.55 ms, (3) low (-20°C) temperature operation and (4) anaerobic operation. *Advice Submitted By:* National Institutes of Health, January 14, 1992.

*Docket Number:* 91–137. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68583–0718. *Instrument:* Stopped Flow Spectrophotometer. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 50861, October 9, 1991. *Reasons:* The foreign instrument provides: (1) 80 spectra per millisecond, (2) microliter sample volume and (3) anaerobic operation. *Advice Submitted By:* National Institutes of Health, January 14, 1992.

*Docket Number:* 91–139. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* (2) Multimicroelectrode Manipulators. *Manufacturer:* Thomas Recording, Germany. *Intended Use:* See notice at 56 FR 50861, October 9, 1991. *Reasons:* The foreign instrument provides individual drive of seven fiber electrodes, each in 2 μm steps. *Advice Submitted By:* National Institutes of Health, January 14, 1992.

*Docket Number:* 91–141. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Solid State Video Camera, MS–4030 and Desk Top Illuminator, Model NL2. *Manufacturer:* Northern Lights Incorporated, Canada. *Intended Use:* See notice at 56 FR 51880, October 16, 1991. *Reasons:* The foreign instrument provides: (1) Freedom from flicker, (2) precise control of intensity, (3) constant light output and (4) a compatible CCD camera for *in vivo* videography. *Advice Submitted By:* National Institutes of Health, January 14, 1992.

*Docket Number:* 91–165. *Applicant:* University of Houston-University Park, Houston, TX 77204–5383. *Instrument:* ALV–5000 Multiple-Tau Digital Correlator and ALV–25 Goniometer. *Manufacturer:* ALV-Laser Vertriebs GmbH, Germany. *Intended Use:* See notice at 56 FR 64244, December 9, 1991. *Reasons:* The foreign instrument provides 256 digital real time correlation channels with fixed grid sampling time (multiple tau sampling) and logarithmic expansion of sampling time ranging from 0.1 μs up to several seconds. *Advice Received By:* National Institutes of Standards and Technology, January 17, 1992.

The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 92–3389 Filed 2–11–92; 8:45 am]

BILLING CODE 3510-DS-M

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**University of Washington, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 91–153. *Applicant:* University of Washington, Seattle, WA 98195. *Instrument:* Electron Microscope, Model JEM–1200EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 56 FR 56409, November 4, 1991. *Order Date:* August 20, 1991.

*Docket Number:* 91–164. *Applicant:* Henrietta Egleston Children's Hospital, Atlanta, GA 30322–1101. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, Inc., Germany. *Intended Use:* See notice at 56 FR 60972, November 29, 1991. *Order Date:* August 28, 1991.

*Docket Number:* 91–173. *Applicant:* Laboratory of Cellular Biology—NIDCD, NIH, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* See notice at 57 FR 399, January 6, 1992. *Order Date:* September 27, 1991.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any

other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 92-3390 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-DS-M

## Minority Business Development Agency

## Business Development Center Applications: Seattle, WA

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $193,473 in Federal funds and a minimum of $34,142 in non-Federal (cost sharing) contributions. The Federal share consist of a base amount of $184,260 and a $9,213 allowance for an audit fee. Cost-Sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from July 1, 1992 to June 30, 1993. The MBDC will operate in the Seattle, Washington Geographic Service Area.

The award number for this MBDC will be 10-10-92007-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with Section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

**CLOSING DATE:** The closing date for submitting an application is March 23, 1991. Applications must be postmarked on or before March 23, 1992.

Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767-8001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main

Street, room 1280, San Francisco, California 94105, March 3, 1992 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Xavier Mena, Regional Director, San Francisco Regional Office at 415/744-3001.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 6, 1992.

**Xavier Mena,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 92-3289 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council (Council's) Administration Committee will hold a meeting on February 19, 1992, at the Colegio de Ingenieros y Agrimensores, Nin and Skerret Streets, Hato Rey, Puerto Rico. The meeting will begin at 10 a.m. and adjourn at 3 p.m.

The agenda items will include budget revision for CY-92, and information from the Chairmen's meeting. The meeting will be conducted in the English language. Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda items.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery management Council, Banco de Ponce Building, suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: 809-766-5926.

Dated: February 5, 1992.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-3292 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-22-M

### National Oceanic and Atmospheric Administration, Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on March 9-12, 1992, at the Stouffer Riverview Plaza Hotel, 64 Water Street, Mobile, Alabama.

#### Council

On March 11, 1992, the Council will convene at 9:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

*From 9:45 a.m. to 11 a.m.:* Hear public testimony on Mackerel Amendment #6, *Note:* Testimony cards must be turned in to staff *before* the start of public testimony;

*From 11 a.m. to 2:30 p.m.:* Discuss Committee recommendations on Mackerel Amendment #6;

*From 2:30 a.m. to 5 p.m.:* Receive reports from Committees:

1. Budget Committee (2:30 p.m. to 2:45 p.m.);
2. AP Selection Committee (2:45 p.m. to 3:00 p.m.);
3. The Data Collection Committee (3:00 p.m. to 3:30 p.m.);
4. Stone Crab Management Committee (3:30 p.m. to 4:00 p.m.);
5. Butterfish Management Committee (4:00 p.m. to 4:15 p.m.);
6. Red Drum Management Committee (4:15 p.m. to 4:30 p.m.);
7. Reef Fish Management Committee (4:30 p.m. to 5:00 p.m.).

The Council will reconvene at 8:30 a.m. on March 12. From 8:30 a.m. until 8:45 a.m., it will consider the appointment of the Law Enforcement Committee Vice Chairman and Committee assignments for new members. It will then receive the following reports:

1. Habitat Protection Committee (8:45 a.m. to 9 a.m.);
2. Shrimp Management Committee (9 a.m. to 9:30 a.m.);

*From 9:30 a.m. to 9:45 a.m.:* Review the new council member workshop on stock assessment and fishery management; and

*From 9:45 a.m. to 10 a.m.:* Review the Council Chairmen's meeting, and conclude with the Enforcement and the Director's reports.

The Council's meeting will then adjourn.

#### Committees

On March 9 the Budget, AP Selection, Stone Crab Management, and Butterfish Management Committees will convene meetings at 12:30 p.m. and adjourn at 5 p.m. On March 10 the Red Drum Management, Reef Fish Management, Data Collection, Mackerel Management and Habitat Protection Committees will convene meetings at 8 a.m. and adjourn at 5 p.m. On March 11 the Shrimp Management Committee will meet at 8 a.m. to 9 a.m.

#### Scoping Meeting

A scoping meeting will be held by the Butterfish Management Committee from 3:30 p.m. to 5:00 p.m. on Monday, March 9, 1992 to discuss with the public issues related to development of a Fishery Management Plan for Gulf Butterfish.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: February 6, 1992.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-3294 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-22-M

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

A Bycatch Team, composed of staff from the North Pacific Fishery Management Council (NPFMC), National Marine Fisheries Service (NMFS), International Pacific Halibut Commission, and Alaska, Washington and Oregon state agencies, will meet on February 13, 1992. The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE in room 2143, Building 4, Seattle, Washington and begin at 10 a.m. There will be two other sites connected to this meeting by teleconference: the NPFMC office, 605 W. 4th Avenue, room 306, Anchorage, Alaska, and the NMFS Regional Office at 9109 Mendenhall Mall Road, Suite 6, Juneau, Alaska.

The Bycatch Team will further develop bycatch amendment alternatives for the Council's review at its meeting the week of April 20, 1992. Also the Bycatch Team will hold further discussions on its Individual Bycatch Quota alternative.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809;

Dated: February 5, 1992.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-3293 Filed 2-11-92; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995-2020 (Support Panel) will meet on 27-28 February 1992, at AL/HRA, Williams AFB, AZ, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 92-3231 Filed 2-11-92; 8:45 am]

BILLING CODE 3910-01-M

### Department of the Air Force;

### USAF Scientific Advisory Board, Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995-2020 (Support Panel) will meet on 5-6 March 1992, at ANSER Corporation, 1215 Jefferson Davis Highway, Washington DC 22202, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 92-3232 Filed 2-11-92; 8:45 am]

BILLING CODE 3910-01-M

### Department of the Army

### Availability for Licensing

**AGENCY:** Office of the Army Judge Advocate General, DoD.

**ACTION:** Notice of government-owned invention available for licensing.

**SUMMARY:** U.S. Patent Application SN 07/642,093, filed on 12 January 1991, entitled IMMUNOGENIC PEPTIDE VACCINES AND METHODS OF PREPARATION, is available for licensing from the Department of the Army.

**FOR FURTHER INFORMATION CONTACT:** Earl T. Reichert, Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, Falls Church, VA 22041-5013, telephone (703) 756-2623.

**Kenneth L. Denton,**

*Army Federal Register, Liaison Officer.*

[FR Doc. 92-3323 Filed 2-11-92; 8:45 am]

BILLING CODE 3710-08-M

### Availability for Licensing

**AGENCY:** Office of the Army Judge Advocate General, DoD.

**ACTION:** Notice of government-owned invention available for licensing.

**SUMMARY:** U.S. Patent No. 4,791,135 entitled NOVEL ANTIMALARIAL DIHYDROARTEMISINI DERIVATIES is available for licensing from the Department of the Army.

**FOR FURTHER INFORMATION CONTACT:** Earl T. Reichert, Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, Falls Church, VA 22041-5013, telephone (703) 756-2623.

**Kenneth L. Denton,**

*Army Federal Register, Liaison Officer.*

[FR Doc. 92-3324 Filed 2-11-92; 8:45 am]

BILLING CODE 3710-08-M

### Personal Property Movement and Storage Program; Qualification Procedures for Motor Carriers and Freight Forwarders

**AGENCY:** Military Traffic Management Command (MTMC), DoD.

**ACTION:** Proposed change to qualification procedures for motor carriers and freight forwarders to participate in the Department of Defense (DOD) International Personal Property Movement and Storage Program.

**SUMMARY:** The Directorate of Personal Property, Headquarters, Military Traffic Management Command, proposes to change the qualification procedures for carriers to participate in the international through Government bill of lading (ITGBL) program for the movement of DOD household goods (HHGs) and unaccompanied baggage (UB) shipments.

**DATES:** Comments must be received by April 13, 1992.

**ADDRESSES:** Headquarters, Military Traffic Management Command, ATTN: MTPP-C (Mrs. Guzzardo or Mrs. Walker), room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Rosemarie F. Guzzardo or Mrs. Sylvia Walker at (703) 756-1190.

**SUPPLEMENTARY INFORMATION:** The same codes of service for the movement of HHGs and UB shipments will be maintained.

Carriers desiring to participate in the international movement of DOD HHGs and UB shipments must meet the following conditions and submit the following documents:

1. Tender of Service Signature Sheet (TOSSS), MTPP Form 9. Form must be completed and signed.

2. Certificate of Cargo Liability Insurance, MT-HQ Form 49-R. Certificate must be executed by an insurer with a rating of "A" or better in the Best's Key Rating Guide.

3. Performance Bond. The performance bond must be:

a. Continuous until cancelled.

b. For a sum of a minimum of $100,000 or 2.5 percent of a carrier's previous year's annual gross income derived from DOD ITGBL traffic, whichever is more. New carriers seeking approval must submit a bond for a minimum of $100,000.

c. Must be received at HQMTMC, ATTN: MTPP-C, no later than 1 month before the cycle in which the carrier will begin receiving shipments. Cycles begin with an effective date of April 1 or October 1. Therefore, bonds must be received for the respective cycle not later than March 1 or September 1.

d. Must be issued by a surety company listed in the Treasury Department Circular No. 570.

4. Small Business Certification. Form must be completed and signed. This requirement is for statistical reporting.

5. Woman-Owned Small Business Certificate. Form must be completed and signed. This requirement is statistical reporting.

6. Small Disadvantaged Business Certificate. Form must be completed and

signed. This requirement is for statistical reporting.

7. Outline of Common Financial and/or Administrative Control (CFAC). This form is to provide information relative to the financial and/or administrative control of a company. Completing this form requires a knowledge of the financial structure of the company (e.g., investors, the type of stock issued, shares held by each entity, etc.). In addition, a complete listing of officers and directors and their financial interest in the company is required.

CFAC must be declared in accordance with the requirements of the Tender of Service. Carriers declaring CFAC will be approved in the same rate channel but not in the same code of service to a destination rate area. A carrier failing to disclose and subsequently determined to be in or under CFAC with another carrier may be removed from the DOD personal property program for a period of up to 2 years.

8. Employee Experience Resume. The carrier must submit employee experience resumes for a minimum of two employees who have prior traffic management experience. Each employee must have a minimum of 3 years of prior experience in the movement of personal property shipments. Experience from employment with an international freight forwarder, van line, or agent for a freight forwarder or van line is considered acceptable experience for purposes of meeting this requirement. The resume must be accompanied by a detailed description of the employee's present or future duties and responsibilities for the carrier seeking approval.

9. Certificate of Independent Pricing. Form must be completed and signed. Signature on this certificate must be by the same person signing the TOSSS.

10. Interstate Commerce Commission (ICC) Freight Forwarder's Permit. The carrier must submit a copy of the permit with the request for approval. The permit must contain the words "foreign commerce" in the text.

11. Financial Statement(s).

a. Carriers must furnish financial statements for the last 2 taxable years. The statements shall be audited by an independent C.P.A. firm and must meet a 2:1 minimum requirement ($2 liquid assets to $1 liabilities). Statements must include an auditor's opinion statement, balance sheet, income statement, retained earnings, and explanation of changes in financial position statements. Notes to financial statements and the auditor's report are an integral part of the financial data and are to be enclosed in this submission.

b. Applicants seeking approval to participate in only the international movement of UB shipments must submit a Net Worth Statement that indicates the applicant has assets of a minimum of $50,000. The statement must be supported by a statement from a United States banking or financial institution which certifies the availability of the capital. The applicant may also meet this requirement by submission of an audited financial statement which certifies liquid assets of a minimum of $50,000.

c. Applicants seeking approval to participate in only the international movement of HHGs must submit a Net Worth Statement that indicates the applicant has assets of a minimum of $100,000. The statement must be supported by a statement from a United States banking or financial institution which certifies the availability of the capital. The applicant may also meet this requirement by submission of an audited financial statement which certifies liquid assets of a minimum of $100,000.

d. Applicants seeking approval to participate in the international movement of HHGs and UB must submit a Net Worth Statement that indicates the applicant has assets of a minimum of $125,000. The statement must be supported by a statement from a United States banking or financial institution which certifies the availability of the capital. The applicant may also meet this requirement by submission of an audited financial statement which certifies liquid assets of a minimum of $125,000.

e. New carriers, just being established and having no historical financial background, are required to submit an actual balance sheet (as of the date of organization). A Pro Forma Balance Sheet (an estimated statement to picture what the financial condition will look like at some given date in the future) is unacceptable and will automatically be rejected. The same minimum financial standard applies, as outlined in the paragraph above. New carriers will be granted temporary approval. In order to receive permanent approval, a new carrier must submit audited financial statements for the next 3 years, in the manner indicated in the above paragraph. Thereafter, MTMC will inform the carrier of any requirements for additional financial statement submissions.

12. Port Rosters. Five copies each of:

a. Overseas general agents.

b. Contiguous United States (CONUS) surface and aerial port terminal agents.

c. Overseas surface and aerial port terminal agents.

Necessary changes may be made during the year, but complete lists must be submitted annually.

**Note:** Port Roster forms have been developed by HQMTMC. If you want a copy of the forms, please contact Mrs. Guzzardo or Mrs. Walker at (703) 756–1190.

13. Line of Credit. It is essential that the carrier have adequate working capital or access to funds to cover shipment expenses while awaiting payment from DOD. A line of credit from an accredited U.S.-based financial institution must be submitted indicating the following minimum amounts:

a. HHGs = $100,000

b. UB = $50,000

c. HHGs and UB = $125,000

The line of credit must be:

a. Continuously in effect with no break between effective dates, e.g., current line of credit, April 1, 19XX to September 30, 19XX; new line of credit, October 1, 19XX to March 31, 19XX.

b. Must be received at HQMTMC, ATTN: MTPP–C, no later than 1 month before the cycle in which the carrier will begin receiving shipments. Cycles begin with an effective date of April 1 or October 1. Therefore, the lines of credit must be received for the respective cycle not later than March 1 or September 1.

c. Issued by a bank listed in the Robert Morris Associates Standards.

The carrier and bank must agree to give a written 30-day notice of line of credit cancellation to Headquarters, Military Traffic Management Command, ATTN: MTPP–C, 5611 Columbia Pike, Falls Church, Virginia 22041–5050. Such notice commences to run from the date said notice is actually received at the office of MTMC.

14. Business License. Carrier must submit a copy of the state or District of Columbia business license in whose jurisdiction the carrier is registered or certified to conduct operations. New carriers must submit a copy of the appropriate business license or other evidence that indicates approval to do business by the Government organization responsible for granting authority to operate within the jurisdiction. When the state Government organization does not regulate or otherwise require registration of a business, the applicant will so state in the request for approval.

15. Containers. Carriers must submit either a bill of sale or lease agreement for containers to be used for international HHGs movements. Generally, only containers listed in MTMC Pamphlet 55–12, Commercial Containers for DOD Household Goods Shipments, are acceptable. The bill of

sale or lease agreement must list the total number of containers the carrier has purchased or intends to purchase or lease.

Note: A container form has been developed by HQMTMC. If you want a copy of the form, please contact Mrs. Guzzardo or Mrs. Walker at (703) 756-1190.

16. Occupancy or Tenancy Agreement. Carrier must submit a copy of either proof of ownership or proof of a lease agreement for the location of the company's primary business office. When a lease is used to meet this requirement, there must be a minimum of 12 months remaining on the lease at the time of submission of the request for approval.

17. Agency Agreements.

a. General Agency Agreement. Carrier must submit a notarized copy of its overseas general agency agreement. The general agent is a business entity employed as a carrier's representative in a country or specified geographic area.

b. Booking Agency Agreement. Carrier must submit a notarized copy of its standard booking agency agreement used to secure the services of origin and destination agents for shipment services such as packing, storage, unpacking, delivery, and similar services customarily provided by local agents providing services on behalf of the carrier. Signed (executed) agreements, between the carrier and agent(s), or agreements containing agreed-upon prices for services are not required for the approval process. However, they are to be made available upon request from HQMTMC, MTPP. As a minimum, agreements must contain information related to the following areas: type(s) of service to be provided by the agent; quality assurance standards; traffic management procedures for registering outgoing shipments and reporting inbound shipments; documentation requirements of both the carrier and agent; billing procedures; and information indicating the terms under which the agreement can be canelled by either party.

18. Business Plan. Copy of company business plan. If your firm is organized by function, i.e., separate commercial, Government, and cash on delivery sections, a business plan, relating to DOD shipments only, is acceptable.

19. Quality Assurance Plan. The Tender of Service (paragraph 48) requires carriers to have a quality control program covering areas such as employee training, agent supervision, and traffic management (routing, tracing, and billing). Carriers must submit a copy of their company's quality assurance plan.

20. On-Site Visit. The carrier must agree to an on-site inspection of the carrier's primary business office by a representative of HQMTMC, MTPP, or an MTMC-designated representative. The on-site inspection is at the option of HQMTMC and is to be conducted to verify the carrier's operating capability, availability of communications equipment, and personnel. The on-site inspection may be conducted prior to or after the carrier has received MTMC approval. Unless unusual circumstances exist, MTMC normally provides the carrier 5-day advance notice prior to the inspection date. The inspecting official provides the carrier with a written report summarizing the results of the inspection.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 92-3328 Filed 2-11-92; 8:45 am]

BILLING CODE 3710-08-M

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**AGENCY:** Military Traffic Management Command (MTMC), DOD.

**ACTION:** Notice of deletion of Joint Carriage Verbiage from the Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34-R.

**SUMMARY:** This is to inform all Department of Defense (DOD) approved domestic and international household goods, unaccompanied baggage, mobile home, and boat carriers of the deletion of joint carriage verbiage from the Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34-R. The Military Traffic Management Command (MTMC), Directorate of Personal Property (MTPP), has already deleted joint carriage from the Tender of Service. This deletion of the term joint carriage from the PPTMR is an administrative action and does not impact a carrier's ability to interline shipments with any other carrier as identified under Item 49 at definition page xxxvi of the DOD 4500.34-R.

Affected items are:

deleted Item 60, page xxxviii,

deleted Item 61, page xxxviii,

deleted wording, Item 2014.a.(1), page 2-10, line 4, deleted the words "Joint Carriage" and replaced with the word "Interline."

Page A-6, Item 16.d, line 1, deleted the words "or joint carriage."

**FOR FURTHER INFORMATION CONTACT:** Mrs. Rosemarie F. Guzzardo or Mrs. Sylvia Walker at (703) 756-1190.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 92-3330 Filed 2-11-92; 8:45 am]

BILLING CODE 3710-08-M

## Military Personal Property Claims Symposium, Military Traffic Management Command, DOD; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Military Personal Property Claims Symposium.

*Date:* 27 February 1992.

*Time:* 0830-1630 hours.

*Place:* Best Western Old Colony Inn, Alexandria, Virginia.

*Proposed Agenda:* The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, telephone number (703) 756-1600, between 0800-1630 hours. Topics to be discussed should be received on or before 17 February 1992.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 92-3331 Filed 2-11-92; 8:45 am]

BILLING CODE 3710-08-M

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**AGENCY:** U.S. Army Engineers Waterways Experiment Station, DoD.

**ACTION:** Notice of availability for exclusive or partially exclusive licensing of a proposed U.S. Patent concerning Computer Controlled Microwave Drying System for Rapid Soil Water Content Determination.

**SUMMARY:** In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the availability of U.S. Patent 5,085,527 for licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Norma E. Logue, United States Army, Corps of Engineers, Waterways Experiment Station, ATTN: CEWES-CT-C, Vicksburg, MS 39180-6199, Phone: 601-634-3076.

**SUPPLEMENTARY INFORMATION:** The invention is based on computer controlled pulsed application of microwave energy to soil while continuously measuring the weight of soil to determine water content equivalent to the conventional oven water content in a time period of about 15 minutes compared with 16 to 24 hours for the latter. The equipment is

automated, user friendly, and requires minimal input and labor from a user; laboratory studies and field trials have shown the equipment to be quick, reliable and accurate to within one-half percentage point of conventional over water content. The prototypes of this invention give quicker and more accurate answers than ASTM Standard Test Method D 4643-87. The device and the data proving its reliability are described in more detail in the following publicly available reference.

Gilbert, P.A., "Computer Controlled Microwave Oven System for Rapid Water Content Determination," Technical Report GL-88-21, USAEWES, November 1988 (NTIS number ADA203684).

Gilbert, P.A., "Computer Controlled Microwave Drying of Potentially Difficult Organic and Inorganic Soils," Technical Report GL-90-26, USAEWES, Vicksburg, MS, December 1990 (NTIS number ADA237487/4/XAB).

Gilbert, P.A., "Rapid Water Content by Computer Controlled Microwave Oven Drying," Journal of the Geotechnical Engineering Division, American Society of Civil Engineers, Vol 117, No. 1, January 1991.

The subject computer controlled microwave drying system would be potentially useful to businesses, agencies, or concerns involved in construction on or with soil, inspection and monitoring of compacted earth fill, laboratory soil testing, or any operation where a rapid soil water content is required. Potential users are Federal Government Agencies (Corps of Engineer District and Division field projects, Department of Interior field projects, Department of Agriculture field projects, etc.) state highway departments, university soil testing laboratories, private soil testing laboratories, quality assurance laboratories, geotechnical consulting firms, or generally anyone involved with soil in construction. The potential U.S. market is believed to exist for several thousand of these devices.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, United States Code, the Department of the Army, Corps of Engineers, Waterways Experiment Station wishes to license the above United States Patent in an exclusive or partially exclusive manner to any party interested in manufacturing or selling the equipment covered by the above mentioned patent.

Each interested party is requested to submit a proposal for an exclusive or a partially exclusive license. The proposals for the manufacturing and selling the equipment covered by the above mentioned patent will be evaluated using the following criteria, experience and quality control in manufacturing related products; scope of advertisement; method of sales; royalties; Small Business.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 92-3327 Filed 2-11-92; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities; Meeting

**AGENCY:** President's Board of Advisors on Historically Black Colleges and Universities, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATE AND TIME:** February 27, 1992, 9 a.m. until 5 p.m. Place: Omni Shoreham Hotel, 2500 Calvert Street, NW. Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Hazel Mingo, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB-3, Washington, DC 20202, Telephone (202) 708-8667.

**SUPPLEMENTARY INFORMATION:** The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically Black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically Black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

This is the second meeting of the President's Board of Advisors on HBCUs for fiscal year 1992. The full Board will convene: (1) To discuss the various recommendations developed by the AMERICA 2000, the Economic Development, the Corporate/HBCU Workforce 2000, and the Management and Technical Assistance Task Forces; and (2) to review the final draft of the fiscal year 1991 annual report to the President, including the Annual Federal Performance Report on Executive Agency Actions to Assist Historically Black Colleges and Universities. The agenda will include time for interested parties to comment on information to be included in the annual report to the President.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative, U.S. Department of Education, ROB-3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: February 7, 1992.

**Carolynn Reid-Wallace,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 92-3385 Filed 2-11-92; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; American Statistical Association; Procurement and Assistance Management Directors

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of intent to make a noncompetitive financial assistance grant award.

**SUMMARY:** DOE announces that, pursuant to 10 CFR 600.7(b)(2)(i)(D), it intends to award a grant to the American Statistical Association (ASA), under Grant Number DE-FG01-92EI22939 for the purpose of conducting a total of six meetings to review the Energy Information Administrations (EIA) statistical programs. The grant will provide funding up to $267,806.

The ASA is a widely recognized and highly prestigious professional society established to further statistical theory in numerous fields. The ASA sponsors the Committee on Energy Statistics which will provide EIA with guidance in addressing key statistical, economic, and technical issues faced by EIA.

**ELIGIBILITY:** The ASA is a non-profit institution with unique assets. The membership of the ASA includes large numbers of highly-qualified and widely recognized statisticians, economists, and other professionals. These committee members are selected by and under purview of the ASA, and no other organization has the necessary knowledge of available Committee members and Committee structure. There is no other entity which represents the statistical community and combines the complete objectivity and academic expertise necessary to carry out this review function. Therefore, DOE has determined that it is appropriate to restrict eligibility in its solicitation.

**TERM:** The term (project period) of the grant is expected to be 3 years, from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Placement and Administration, Attn: Shirley Jones, PR-321.1, 1000 Independence Ave., SW., Washington, DC 20585.

**Jeffrey Rubenstein,**

*Director, Operations Division "A", Office of Placement and Administration.*

[FR Doc. 92-3377 Filed 2-11-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. ER92-289-000, et al.]**

## PSI Energy, Inc., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 3, 1992.

Take notice that the following filings have been made with the Commission:

### 1. PSI Energy, Inc.

[Docket No. ER92-289-000]

Take notice that PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc., on January 27, 1992, tendered for filing a supplement to Service Schedule D—Supplemental Power and Energy of the Power Coordination Agreement, dated August 27, 1982, amended, between PSI and the Indiana Municipal Power Agency (IMPA), in order to provide certain Economic Development incentives under Section 5 of said Service Schedule.

Such Economic Development incentives are for an expanded industrial facility at Archer-Daniels-Midland Company in Frankfort, Indiana. Frankfort City and Light is a member of IMPA. The Economic Development incentives are limited to one megawatt, the expected load of the expansion project.

PSI has requested waiver of the Commission's applicable requirements of part 35 of its Regulation not complied with including any notice requirements of § 35.3. The requested effective date for such Economic Development incentives applicable to Archer-Daniels-Midland Company is December 15, 1991.

Copies of the filing were served on Frankfort City Light and Power, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 2. Central Louisiana Electric Company, Inc.

[Docket No. ER92-287-000]

February 3, 1992.

Take notice that on January 27, 1992, Central Louisiana Electric Company, Inc. ("CLECO") tendered for filing an agreement modifying the Contract for the Sale of Special Energy Between Central Louisiana Electric Company, Inc. to the City of Alexandria effective henceforth.

CLECO has requested that the Commission waive its notice and filing requirements to permit this agreement to become effective in accordance with the term of the original contract. CLECO has served copies of the filing on the affected customer and on the Louisiana Public Service Commission.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 3. Pacific Gas and Electric Company

[Docket No. ER92-285-000]

February 3, 1992.

Take notice that on January 27, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing with the Commission an amendment to the Comprehensive Agreement Between State of California Department of Water Resources and Pacific Gas and Electric Company (Comprehensive Agreement).

The amendment is a letter agreement negotiated to allow California Department of Water Resources (CDWR) greater scheduling flexibility at PG&E's Midway Substation (Midway). This letter agreement does not change CDWR's Firm Transmission Service, as provided by PG&E pursuant to the Comprehensive Agreement. It provides some additional as-available transmission service between Midway and the Southern California Edison Company transmission system. There are no additional charges for services in this letter agreement. PG&E has requested a retroactive effective date of November 1, 1991.

Copies of this filing have been served upon CDWR and the CPUC.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 4. Pacific Gas and Electric Company

[Docket No. ER91-628-000]

February 3, 1992.

Take notice that on January 27, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to FERC Docket No. ER91-628-000. That Docket consisted of a rate schedule, filed to enable PG&E and the Los Angeles Department of Water and Power (LADWP) to engage in short-term transactions, including purchases, sales, or exchanges of surplus energy, capacity and transmission services. Services under this rate schedule are to be provided at the prices not to exceed certain cost-based prices specified in the Rate Exhibit of the rate schedule. In response to comments from FERC Staff, PG&E has negotiated with LADWP certain changes to the Rate Exhibit. The present amended filing tenders a revised Rate Exhibit for filing and acceptance.

Copies of this filing were served upon LADWP and the California Public Utilities Commission.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 5. New England Power Company

[Docket No. ER92-286-000]

February 3, 1992.

Take notice that New England Power Company (NEP), on January 27, 1992, tendered for filing six service agreements and two certificates of concurrence executed under NEP's FERC Electric Tariff, Original Volume Number 5, System Energy Sales and Exchanges Tariff. The service agreements are with the following companies: Chicopee Municipal Lighting Plant, Chicopee, MA, Hudson Light & Power Dept., Hudson, MA, Long Island Lighting company, Hicksville, NY, Niagara Mohawk Corp., Syracuse, NY, UNITIL Power Corp., Exeter, NH, and Vermont Electric Generation and Transmission Cooperative, Inc., Johnson, VT. The certificates of concurrence are with: Niagara Mohawk Corp., Syracuse, NY and UNITIL Power Corp., Exeter, NH. NEP requests waiver of the Commission's notice requirements so that these agreements may become effective in accordance with their terms.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E end of this notice.

**6. The Montana Power Company**

[Docket No. ER92-294-000]

February 3, 1992.

Take notice that on January 23, 1992, The Montana Power Company ("Montana") tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a revised Index of Purchasers under FERC Electric Tariff, 2nd Revised Volume No. 1 (M-1 Tariff).

A copy of the filing was served upon Tucson Electric Power Company, Turlock Irrigation District, Western Area Power Administration (Loveland), Western Area Power Administration (Salt Lake City-for Montrose), and Deseret Generation & Transmission Co-operative.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**7. New York Power Pool**

[Docket No. ER92-142-000]

Take notice that on January 24, 1992, the New York Power Pool ("NYPP") filed additional information in support of proposed amendments to the New York Power Pool Agreement, on file with the Commission as NYPP FERC Rate Schedule No. 1, which proposed changes were filed on October 30, 1991. The additional information was requested by Commission Staff. NYPP renews its request for an effective date of January 1, 1992, as requested in the October 30th filing, and accordingly, seeks waiver of the Commission's notice requirements for good cause shown.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**8. Iowa Power Inc.**

[Docket No. ER92-288-000]

Take notice that on January 27, 1992, Iowa Power Inc. (Iowa Power) tendered for filing a General Facilities Agreement between Iowa Power and Central Iowa Power Cooperative ("CIPCO") dated November 26, 1991.

Iowa Power states that the General Facilities Agreement is a negotiated agreement specifying the respective rights and obligations of the parties; that is supersedes several existing agreements between Iowa Power and CIPCO; and that CIPCO and the Iowa State Utilities Board have been mailed copies of the filing.

Iowa Power requests an effective date of January 1, 1992, and therefore requests a waiver of the Commission's notice request requirements.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**9. Vermont Electric Power Company, Inc.**

[Docket No. ER92-284-000]

Take notice that Vermont Electric Power Company, Inc. (VELCO) on January 23, 1992, tendered for filing a transmission agreement entitled, VELCO 1991 Transmission Agreement, which would terminate and supersede VELCO Rate Schedules Nos. 235, 239, and 240.

The nature of the change is as follows: the service provided under the rate schedules that are being superseded (VELCO Rate Schedules Nos. 235, 239 and 240) will continue under the new rate schedule without alteration or interruption. The only substantive change is to the pricing formula (Article IV of the new rate schedule).

The pricing formula under the rate schedules to be superseded provide for postage-stamped charges based on the total of VELCO's costs, without regard to which facilities provide service to which customers. Under the new formula, the carrying charges for new facilities that are to be used by and benefit one or more, but not all, of the Purchasers by direct interconnection to the VELCO system would be paid for, for a period of ten years, exclusively by those benefiting from them. After ten years, such facilities would be grandfathered into the common facilities, whose support charges would then be paid for by all Purchasers.

There are several other changes to the pricing formula. The principal billing determinant will be peak load, rather than contract demand. Also, a credit will be given for internal generation. Lastly, a lower rate for transmission for short-term sales is provided.

These changes will yield small alterations in the distribution of VELCO's transmission charges among the Purchasers, but it will result in no net change in VELCO's revenues.

VELCO states that the reasons for the change are as follows: The principal reason for the changes to be effected by placing the 1991 VELCO Transmission Agreement into effect, and by terminating the existing rate schedules referenced above, is referenced above, is to implement a pricing formula for transmission service that provides appropriate, efficiency-promoting price signals to the Purchasers. Both VELCO and the Purchasers have long recognized that the existing pricing formula fails to provide appropriate financial incentives for the efficient selection of transmission facilities used to serve specific customers, and recent experience with independent power producers indicates that it may also provide distorted incentives for the siting of generation facilities. Until now, however, it has been impossible to reach consensus among the majority of VELCO's customers as to how to structure a new mechanism that is both equitable and conducive to efficient transmission system development.

With the new formula in place, no single Purchaser, or limited group of purchasers, will be likely to request that VELCO construct new transmission facilities that will not provide significant benefits to the majority of Purchasers, unless it or they are willing to bear all of the associated costs for a period of ten years. The change will also make it less likely that any Vermont utility will build new generating facilities (r will agree to buy power from new generating facilities to be built by others) unless that generation is a sound investment after taking into account any necessary, associated transmission improvements.

The internal generation credit is also an efficiency-promoting feature that accounts for the benefits that internal generation provides to the transmission system. Lastly, the lower rate for short-term, off-system sales will encourage greater, and hence more efficient use of available transmission capacity on the VELCO system.

Copies of the filing were served upon the following: Barton Village, Inc., City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water and Light Department, Franklin Electric Light Department, Green Mountain Power Corporation, Town of Hardwick Electric Department, Village of Hyde Park, Inc., Village of Jacksonville Electric Company, Village of Johnson Electric Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water and Light Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Village of Readsboro Electric Light Department, Rochester Electric Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Inc., Vermont Marble Company, Vermont Public Service Board.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**10. Iowa Southern Utilities Company**

[Docket No. ER91-559-000]

Take notice that Iowa Southern Utilities Company (ISU) on January 21, 1992, tendered for filing a second amendment to its July 29, 1991 filing in this docket. The amendment provides additional information relating to and justification for the rate charged in the Transmission Agreement between ISU and the City of Pella, Iowa (Pella).

Copies of the filing were served upon Pella and upon the Iowa State Utilities Board.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**11. Alabama Power Company**

[Docket No. ER92-215-000]

Take notice that on January 23, 1992, Alabama Power Company tendered for filing supplemental information in connection with proposed changes in its Rate Schedule MUN-1, which were filed on December 3, 1991. Alabama Power Company has requested an effective date of February 1, 1992. Copies of this filing were served upon customers of Alabama Power Company served under Rate Schedule MUN-1, the Alabama Public Service Commission and the Southeastern Power Administration.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**12. Wisconsin Public Service Company**

[Docket No. EL92-12-000]

Take notice that Wisconsin Public Service Company ("WPSC") on January 24, 1992 tendered for filing an amendment to its petition for permission to modify its fuel adjustment clause for customers under its W-1, W-2 and W-3 rates and the proposed fuel clause amendments.

The customers affected by WPSC's filing are:

| Customer | Rate category | Rate schedule or tariff designation |
|---|---|---|
| Alger Delta Electric Assoc.. | W-1 | Tariff, Original Vol. 2, Service Agreement #8. |
| Washington Island Electric. | W-1 | Tariff, Original Vol. 2, Service Agreement #5. |
| Village of Daggett. | W-1 | Tariff, Original Vol. 2, Service Agreement #3. |
| City of Stephenson. | W-1 | Tariff, Original Vol. 2, Service Agreement #4. |
| Village of Stratford. | W-1 | Tariff, Original Vol. 2, Service Agreement #6. |
| Wisconsin Public Power, Inc. System. | W-1 | Tariff, Original Vol. 2, Service Agreement #1. |
| City of Wisconsin Rapids. | W-1 | Tariff, Original Vol. 2, Service Agreement #7. |
| Consolidated Water Power Co.. | W-3 | Tariff, Original Vol. 3, Service Agreement #1. |
| City of Manitowoc. | W-2 | Tariff, Original Vol. 1, Service Agreement #5. |
| City of Marshfield.. | W-1 | Tariff, Original Vol. 2, Service Agreement #9. |

The Alger Delta Electric Association, the Village of Daggett and the City of Stephenson are located in Michigan. The other customers are located in Wisconsin.

WPSC requests that the Commission waive the provisions of 18 CFR 35.14 of its regulations to the extent necessary to permit recovery of the buyout costs through the fuel clause and that it waive its notice requirements to allow the change to become effective on January 1, 1992. If the proposed January 1, 1992 effective date is not granted, WPSC requests that the December 31, 1991 filing be granted a January 1, 1991 effective date and that the proposed amendments to that filing become effective on March 25, 1992, 60 days from the date of filing. WPSC states that the filing has been served on the affected customers and on the public service commissions of Michigan and Wisconsin and that the filing has been posted as required by the Commission's regulations.

*Comment date:* February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 92-3285 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Project No. 2232-250]**

## Duke Power Co. Application

January 22, 1992.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Shoreline Management Plan.

b. *Project No:* 2232-250.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree.

f. *Location:* Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster and York Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John E. Lansche, Associate General Counsel, Legal Department, Duke Power Company, P.O. Box 33189, Charlotte, NC 28242, (704) 373-4871.

i. *FERC Contact:* Mr. Dan Hayes, (202) 219-2660.

j. *Comment Date:* March 5, 1992.

k. *Description of Project:* Duke Power Company has filed an application for a shoreline management plan which will provide primary guidance for determining the acceptability of future development on the shoreline of all lake developments within the project. The application describes the requirements which will be enforced regarding specific types of development, and provides general guidance as to the amount of future development which can occur at various lakes within the project.

1. *This notice also consists of the following standard paragraphs: B, C, and D2.*

**Standard Paragraphs**

B. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "**COMMENTS**", "**NOTICE OF INTENT TO FILE COMPETING APPLICATION**", "**COMPETING APPLICATON**", "**PROTEST**", "**MOTION TO INTERVENE**", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3286 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP92-314-000, et al.]**

## Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

### 1. Tennessee Gas Pipeline Co.

[Docket No. CP92-314-000]

February 3, 1992.

Take notice that on January 24, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-314-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon three interruptible transportation services for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that by orders issued in Docket Nos. CP77-31, CP81-482-000 and CP85-532-000, certificates of public convenience and necessity were granted to Tennessee authorizing Tennessee to transport natural gas produced in the offshore area of Louisiana to various onshore points of delivery for Amoco in the states of Louisiana and Mississippi.

Tennessee indicates that it filed the gas transportation agreements dated September 10, 1976, October 20, 1980, and March 27, 1985, providing for such transportation services by Tennessee. Tennessee further indicates that the agreements have been designated as Rate Schedules T-50, T-128 and T-162 of Tennessee's FERC Gas Tariff, Original Volume No. 2. Tennessee further indicates that no service has actually been rendered by Tennessee under any of the rate schedules for at least two years. Tennessee states that Amoco has executed written confirmation of its agreement that the transportation services are no longer needed and may be abandoned. Tennessee further states that no facilities would be abandoned.

*Comment date:* February 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

### 2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92-320-000]

February 3, 1992.

Take notice that on January 27, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP92-320-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a compressor unit in the state of Arkansas under its blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER states that it proposes to abandon and remove a 120 hp skid-mounted rental compressor unit installed temporarily on its Line JM-21, section 2, T4N, R2E, to serve customers in St. Francis County, Arkansas. AER further states that this compressor was installed pursuant to its blanket certificate issued in Docket No. CP82-384-000 and will be reported in the 1991 Annual Construction Report as required by § 157.207 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.207).

To alleviate any future low pressure problems that may be experienced in this area, AER indicates that it plans to install a permanent 180 hp compressor unit at this location.

*Comment date:* March 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 3. Northwest Pipeline Corp.

[Docket No. CP92-318-000]

February 3, 1992.

Take notice that on January 27, 1992, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-318-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible transportation service for Questar Pipeline Company (Questar) which was originally authorized in Docket No. CP84-498, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is requesting authorization to abandon the transportation service it provided to Questar pursuant to a Gas Transportation Agreement dated November 21, 1983. This Agreement covered the transportation of up to 3,000 MMBtu's per day of gas from Northwest's Opal Plant to the Crossover 16 mainline interconnect with Questar in Sweetwater County, Wyoming. Northwest indicates that pursuant to a letter agreement dated April 15, 1991, Northwest and Questar agreed to terminate the subject agreement as of April 15, 1991. Northwest further states that no abandonment of facilities is proposed in conjunction with the abandonment of this service.

*Comment date:* February 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

### 4. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-321-000]

February 4, 1992.

Take notice that on January 29, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-321-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval for the abandonment of the transportation service provided to Kansas Power and Light Company (KPL)

as authorized in Docket No. CP84-152-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it is authorized to provide interruptible transportation of up to 1,000 Mcf of natural gas to KPL under Panhandle's Rates Schedule T-58, FERC Gas Tariff, Original Volume No. 2.

Panhandle also states that it transports the gas under a transportation agreement dated October 13, 1983. Panhandle received KPL's gas purchased from Rhine Exploration Company (Rhine) according to a gas purchased agreement between KPL and Rhine dated October 13, 1983, it is stated. It is stated that by letter dated March 8, 1989, KPL notified Panhandle of its desire to terminate the agreement effective June 9, 1989. Panhandle states upon approval of the abandonment authorization, it would modify its existing tariff to reflect the abandonment of its Rate Schedule T-58.

*Comment date:* February 25, 1992, in accordance with Standard Paragraph F at the end of the notice.

**5. El Paso Natural Gas Co.**

[Docket No. CP92-316-000]

February 4, 1992.

Take notice that on January 27, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP92-316-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a delivery point and to provide interruptible transportation service for Texaco Gas Marketing, Inc. (TGM) all as more fully set forth in the request for authorization on file with the Commission and open to public inspection.

El Paso states that El Paso and TGM have entered into a Transportation Service Agreement (Agreement) dated November 21, 1991, which will provide, *inter alia*, for transportation service by El Paso to TGM of up to 1,133 MMBtu of natural gas per day from Texaco Inc.'s North Eunice Processing Plant to a proposed point of delivery to Texaco Exploration and Production Inc. (Texaco E&P) in Lea County, New Mexico. El Paso states that the estimated daily and annual quantities would be 2,060 MMBtu and 413,545 MMBtu, respectively.

El Paso states that Texaco E&P is currently involved in an oil recovery program and that it will utilize the natural gas delivered by El Paso to inject water into oil wells to recovery oil trapped beneath the surface.

El Paso also states that the construction of the proposed delivery point is not prohibited by El Paso's existing tariff and that El Paso has sufficient capacity to accomplish the deliveries specified under the Agreement without detriment or disadvantage to El Paso's other customers. Accordingly, El Paso seeks authorization to construct and operate the proposed Grobe Fuel Delivery Point to be located in Lea County, New Mexico.

El Paso estimates the proposed facilities to cost approximately $21,000. El Paso states Texas E&P has agreed to reimburse El Paso for cost related to the construction of the proposed delivery point.

El Paso further states that El Paso's environmental analysis supports the conclusion that the construction and operation of the proposed delivery point will not be a major Federal action significantly affecting the human environment.

*Comment date:* March 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

**6. Midwestern Gas Transmission Co.**

[Docket No. CP92-324-000]

February 4, 1992.

Take notice that on January 31, 1992, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-324-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point to an existing firm sales customer, Community Natural Gas Company (Community), under Midwestern's blanket certificate issued in Docket No. CP82-414-000 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.

Midwestern states that pursuant to Community's request, it has agreed to establish a new delivery point at Carlisle, Sullivan County, Indiana, which delivery point is required to provide service to a new customer. Midwestern further states that it currently provides service to Community under Midwestern's SR-1 Rate Schedule and pursuant to an agreement dated August 14, 1981, at an existing Carlisle delivery point located at Midwestern's Main Line Valve 2112-1 plus 12.56 miles in Sullivan County. Midwestern advises that the new delivery point would require the construction of a 2-inch hot tap and would be known as the Carlisle Prison Sales Meter Station. Additionally, Midwestern states that all costs associated with the construction of the proposed new delivery point (estimated to be $8,658) would be reimbursed by Community.

Also, Midwestern states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Community for the Town of Carlisle. Midwestern asserts that the establishment of the proposed new delivery point is not prohibited by Midwestern's currently effective tariff and that it has sufficient capacity to accomplish the deliveries (390 Dekatherms equivalent per day, 142,350 Dekatherms annually) at the proposed new delivery point without detriment or disadvantage to any of Midwestern's customers.

*Comment date:* March 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

**7. ANR Pipeline Co.**

[Docket No. CP92-306-000]

February 4, 1992.

Take notice that on January 16, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate, under the provisions of section 7 of the Natural Gas Act, the Overisal delivery point for the delivery of gas to Consumers Power Company in Allegan County, Michigan, all as more fully set forth in the request on file with the Commission and open to public inspection.—

ANR states that it has contracts with Consumers to transport up to 443,205 dth of natural gas per day under ANR's Rate Schedule FT-1 (139,665 dth daily) and under ANR's Rate Schedule IT-1 (303,540 dth daily). It is stated that the quantity of gas to be delivered to the Overisal delivery point for part of Consumer's system supply is up to 275,000 dth per day. ANR states that it anticipates no significant impact on its peak day or annual deliveries as a result of the proposed service.

*Comment date:* March 20, 1992, 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. 92-3287 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM92-13-20-000]**

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 30, 1992, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets Fifth Revised Sheet No. 92 and Fifth Revised Sheet No. 674D, to be effective March 1, 1992.

Algonquin states that the purpose of this filing is to track changes to the amount of take-or-pay charges to be billed to Algonquin by CNG Transmission Corporation. The take-or-pay charges are recovered by operation of § 33.7 of the General Terms and Conditions to Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin also states that the revised take-or-pay surcharges are the result of revised allocation methods imposed by its pipeline suppliers in response to the Commission's Order No. 528 and 528-A.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 12, 1992. 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. 92-3277 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. IS92-3-000, IS92-3-000, IS92-4-000, IS92-5-000, IS92-6-000, IS92-7-000, IS92-8-000, IS92-9-000, IS92-5-000]**

## Conoco Inc. v. Amerada Hess Pipeline Corp., ARCO Transportation Alaska, Inc., BP Pipeline (Alaska) Inc., Exxon Pipeline Co., Mobil Alaska Pipeline Co., Phillips Alaska Pipeline Corp., Unocal Pipeline Co.; Notice of Complaint

February 5, 1992.

Take notice that on December 20, 1991, Conoco Inc. (Conoco), pursuant to Rules 206, 211, 212 and 1403 of the Commission's Rules of Practice and Procedure (18 CFR 385.206, 385.211, 385.212, and 385.1403 (1991) and sections 13(1), 15(1), and 15(7), tendered for filing a complaint concerning each of the captioned tariff filings. In its complaint, Conoco states that it ships Milne Point crude oil from its facility on the North Slope of Alaska to the Kuparuk Transportation Company (Kaparuk) pipeline and from there to the Trans Alaska Pipeline System (TAPS). Conoco alleges that it indirectly pays the TAPS Carriers a higher transportation rate than other shippers based solely on the pumpability of its crude oil as determined by a calculation applied to the petroleum it ships. Conoco states that it must pay this rate because its production is commingled with heavier Kuparuk crude oil. Conoco alleges that the higher rate charged Kuparuk shippers is not justified because it is not explained in the tariff and is not discussed in the Commission order approving the rate methodology employed for TAPS transportation rates. Further, Conoco alleges that the pumpability surcharge is based on hypothetical flow conditions that bear no relationship to cost of service, and that the pumpability factor is, therefore, unduly discriminatory, unjust, and unreasonable.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before March 6, 1992. 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. Answers to this complaint shall be due on or before March 6, 1992.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3276 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-48-000]

## ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that ANR Pipeline Company ("ANR"), on January 30, 1992 tendered for filing as part of its Original Volume Nos. 1, 1-A, 2 and 3 of its FERC Gas Tariff, six copies of the tariff sheets as listed in appendix A attached to the filing.

ANR states that the referenced tariff sheets are being submitted to remove all references in ANR's tariff to the Gas Research Institute ("GRI") and the GRI Adjustment Charge. ANR has requested that the Commission accept the tendered tariff sheets to become effective March 1, 1992.

ANR states that all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426 by February 12, 1992, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3259 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-3-63-000, TQ92-3-63-001]

## Carnegie Natural Gas Co; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that on January 31, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective march 1, 1992:

Twenty-Seventh Revised Sheet No. 8
Twenty-Seventh Revised Sheet No. 9

Carnegie states that pursuant to the PGA clause in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its sales rates effective March 1, 1992, as part of its scheduled Quarterly PGA filing. The revised rates reflect the following changes from Carnegie's last regularly-scheduled quarterly PGA filing in Docket No. TQ92-2-63-000: a $0.1762 per Dth decrease in the demand rates under Rate Schedules LVWS and CDS; a $0.8758 per Dth decrease in the commodity rates under Rate Schedules LVWS and CDS and the summer period rate under Rate Schedule LVIS; a $0.8816 per Dth decrease in the winter period rate under Rate Schedule LVIS; and a $0.0058 per Dth decrease in the DCA component of its sales rates under Rate Schedules LVWS and CDS.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR sections 385.214 and 18 CFR 385.211. All such protests should be filed on or before February 12, 1992. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3267 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-2-22-000]

## CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that CNG Transmission Corporation (CNG) on January 30, 1992, pursuant to section 4 of the Natural Gas Act and Section 12 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff, to be effective March 1, 1992:

Sixteenth Revised Sheet No. 31
Eleventh Revised Sheet No. 34

CNG states that the primary filing would increase CNG's RQ, ACD, and CD commodity rates by 37.01 cents per dekatherm and decrease D-1 demand rates by $0.06 per dekatherm from the rates currently in effect. CNG states that other rates will change correspondingly.

CNG states that copies of the filing have been served upon each of its customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 12, 1992. 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. 92-3271 Filed 5-11-92; 8:45 am]

BILLING CODE 6717-01-M

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## Colorado Interstate Gas Co., Proposed Changes in FERC Gas Tariff

[Docket Nos. RP92-96-000 and RP92-96-001]

February 5, 1992.

Take Notice that Colorado Interstate Gas Company ("CIG") on January 30, 1992, tendered for filing certain revisions to its FERC Gas Tariff, Original Volume Nos. 1, 2, and 3. CIG states that the purpose of this filing is to make miscellaneous update changes to the Table of Contents and other minor administrative changes. An effective date of March 1, 1992, is requested for these tariff sheets. Additionally, CIG states that three of the submitted tariff sheets correct an administrative oversight related to tariff sheets filed to implement its August 5, 1991, rate settlement in Docket No. RP90-69, *et al.* CIG requests an effective date for these three sheets of April 1, 1991.

CIG states that is has served a copy of this filing upon all holders of its Volume Nos. 1, 2, and 3 Tariff.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 or Rule 211 (18 CFR 385.214 or 385.211) of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before

February 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3260 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-3-24-000]**

## Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that Equitrans, Inc. (Equitrans) on January 30, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, to be effective March 1, 1992, the following primary tariff sheets:

Thirty-Fourth Revised Sheet No. 10
Twenty-Fourth Revised Sheet No. 34

Equitrans also states that it is filing the following alternate tariff sheets:

Alternate Thirty-Fourth Revised Sheet No. 10
Alternate Twenty-Fourth Revised Sheet No. 34

Equitrans states that the purpose of the filing is to implement its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's Regulations, and section 19 of Equitrans' FERC Gas Tariff.

Equitrans states that the changes proposed in the primary filing to the purchased gas cost adjustment under Rate Scheduled PLS consist of an increase in the demand cost of $0.0042 per dekatherm (dth) and a decrease in the commodity cost of $0.7359 per dth. Equitrans asserts that the purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.6750 per dth for the winter period and $0.6751 per dth for the base rate.

Equitrans states that the alternate tariff sheets are being filed to implement the pending certification before the Commission in Docket No. CP92-109-000 to provide firm sales service of up to 50,000 dth per day of natural gas to Texas Eastern Transmission Corporation during the winter season of November through March. The changes to Rate Schedule PLS in the alternate filing consist of an increase in the demand cost of $0.0042 per dth and a decrease in the commodity cost of $0.7630 per dth. The alternate purchased gas adjustment to Rate Schedule ISS is a decrease of $0.6978 per dth for the winter period and $0.6979 per dth for the base period.

Equitrans states that copies of the filing have been served upon its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 12, 1992. 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. 92-3275 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-1-53-000]**

## K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that K N Energy, Inc. ("K N") on January 30, 1992 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

| | Zone 1 | Zone 2 |
|---|---|---|
| CD, SF and WPS | | |
| Commodity | $(0.0041) | $(0.0041) |
| D1 Demand | 0.0002 | 0.0003 |
| D2 Demand | 0.0017 | 0.0025 |
| WPS Demand | 0.0004 | 0.0006 |
| IOR Commodity | (0.0022) | (0.0013) |

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending May 31, 1992. The proposed effective date for the rate changes is March 1, 1992.

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before February 12, 1992, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3265 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-102-000]**

## Kentucky West Virginia Gas Company; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that on January 31, 1992, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing proposed changes to the following tariff sheets of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective March 1, 1992:

Thirty-Fourth Revised Sheet No. 41
Fourth Revised Sheet No. 42
Fourth Revised Sheet No. 43

Kentucky West states that the purpose tariff changes are filed pursuant to §§ 154.63 and 154.303(e) of the Commission's Regulations, and establish new base tariff rates (referred to as the primary base tariff rates) to be effective March 1, 1992, based upon actual costs for the base period ended October 31, 1991, and adjusted only for changes occurring in that period. In the event the proposed primary rates are suspended, Kentucky West has tendered interim base tariff rates to be effective for the suspension period. The alternate interim rates only restate Kentucky West's base tariff rates to reflect the current cost of gas sold in the base rates.

Kentucky West states that copies of the filing have been served upon each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 12, 1992. 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. 92-3270 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-2-15-000]**

## Mid Louisiana Gas Co.; Proposed Change of Rates

February 5, 1992.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on January 30, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective February 1, 1992:

Eighty-Ninth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Eighty-Ninth Revised Sheet No. 3a is to reflect current gas costs for the month of February 1992.

Mid Louisiana states that the tariff sheet was filed as an out-of-cycle PGA to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. Mid Louisiana states that the majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana states that copies of the filing are being mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 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 February 12, 1992. 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. 92-3263 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-3-15-000]**

## Mid Louisiana Gas Co.; Proposed Change of Rates

February 5, 1992.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on January 31, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective March 1, 1992:

Ninetieth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Ninetieth Revised Sheet No. 3a is to reflect a $.0151 per Mcf decrease in its current cost of gas.

Mid Louisiana states that this filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff.

Mid Louisiana states that copies of the filing are being mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 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 February 12, 1992. 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. 92-3262 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-6-25-000]**

## Mississippi River Transmission Corporation; Rate Change Filling

February 5, 1992.

Take notice that on January 30, 1992 Mississippi River Transmission Corporation (MRT) tendered for filling Seventy-Second Revised Sheet No. 4, and Thirty-First Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective February 1, 1992. MRT states that the purpose of the instant filling is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states the Seventy-Second Revised Sheet No. 4 and Thirty-First Revised Sheet No. 4.1 reflect a decrease of 36.39 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective January 1, 1992 in Docket No. TQ92-5-25-000. MRT also states that since the December 30, 1991 filing date, MRT has experienced decreases in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

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 of Practice and Procedure. All such motions or protests should be filed on or before February 12, 1992. 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. 92-3266 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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## Mississippi River Transmission Corporation; Rate Change Filing

**[Docket Nos. RP92-101-000 and TQ92-7-25-000]**

February 5, 1992.

Take notice that on January 30, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Third Sheet No. 4 and Thirty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective March 1, 1992.

MRT states that the instant filing reflects its quarterly purchased gas cost

adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and Paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that it is also adjusting the level of Account No. 858 expenses included in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89-248 approved by Commission order dated August 7, 1991. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is a decrease of $.015 per MMBtu in the demand charge, and a decrease of 16.86 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA effective February 1, 1992 in Docket No. TQ92-6-25-000. The single part rate under Rate Schedule SGS-1 reflects a decrease of 17.01 cents per MMBtu.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 12, 1992. 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. 92-3269 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP81-319-002]**

## National Fuel Gas Distribution Corp.; Compliance Filing for Rate Election Pursuant to Section 284.224(e)(2)

February 5, 1992.

Take notice that on January 29, 1992 National Fuel Gas Distribution Corporation (National Fuel Gas Distribution) made a compliance filing pursuant to its blanket certificate in Docket No. CP81-319-000 which authorized it to engage in the sale, transportation, or assignment of natural gas subject to the Commission's jurisdiction under the Natural Gas Act to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by subparts C, D, and E of Part 284 of the Commission's regulations. National Fuel Gas Distribution states that this filing complies with the order in Docket No. CP81-319-000 which stated that if it decided to perform transportation services utilizing the proposed blanket authorization, it must file pursuant to section 284.224(e)(2) of the regulations for approval of a proposed methodology.

National Fuel Gas Distribution states in its filing that it has no existing rates on file with the New York Public Service Commission (NYPSC) for city-gate service. Accordingly, National Fuel Gas Distribution states that it has elected to derive its maximum unit rate applicable to such transportation on the methodology used by NYPSC in designing its rates for the recovery of the costs of transportation, less distribution and gas costs. That methodology produces a rate of $0.3966 per Mcf. The derivation of the rate is set forth in Appendix A to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 20 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. A copy of the filing is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3272 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. RP92-1-000 and CP92-71-000]**

## Northern Natural Gas Co.; Informal Settlement Conference

February 5, 1992.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on February 13, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. The settlement conference will follow the previously-scheduled prehearing conference in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208-1076, or John J. Keating, (202) 208-0762.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3264 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-202-001]**

## Paiute Pipeline Co.; Motion to Make Tariff Sheets Effective

February 5, 1992.

Take notice that on January 30, 1992, Paiute Pipeline Company (Paiute) filed a motion pursuant to section 4(e) of the Natural Gas Act and § 154.67(a) of the Commission's regulations to make effective on February 1, 1992 certain rates and tariff sheets in connection with Paiute's request for general rate relief in Docket No. RP91-202-000. Specifically, Paiute has moved to place into effect on February 1, 1992 Substitute First Revised Sheet No. 10 and First Revised Sheet No. 130 of the First Revised Volume No. 1-A of its FERC Gas Tariff.

Paiute states that on August 1, 1991, Paiute filed First Revised Sheet Nos. 10 and 130 of First Revised Volume No. 1-A in this proceeding, pursuant to section 4 of the Natural Gas Act, to implement a proposed general rate increase. Paiute further states that by order issued August 30, 1991, the Commission accepted Paiute's proposed tariff sheets and suspended their effectiveness for five months to become effective February 1, 1992, subject to refund. Paiute states that in its suspension order, the Commission permitted Paiute to include in its proposed rates costs associated with facilities which at the time of Paiute's August 1, 1991 filing had not yet been placed in service, subject to the condition that Paiute refile its rates to remove all costs associated with all facilities which had not been placed in service as of December 31, 1991.

With its motion, Paiute submitted Substitute First Revised Sheet No. 10.

Paiute indicates that Substitute First Revised Sheet No. 10, in accordance with the Commission's suspension order, sets forth the rates proposed by Paiute in its August 1, 1991 filing in this proceeding, modified to reflect the exclusion of all costs associated with facilities which had not been placed in service as of December 31, 1991. Paiute also states that Substitute First Revised Sheet No. 10 incorporates the change in the annual charge adjustment surcharge rate which was approved by the Commission in Docket No. TM92-1-41-000 by order issued September 30, 1991. Paiute moves that Substitute First Revised Sheet No. 10, along with First Revised Sheet No. 130, which was included in Paiute's August 1, 1991 filing, be made effective February 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3258 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-2-55-000]**

## Questar Pipeline Co.; Rate Change

February 5, 1992.

Take notice that on January 31, 1992, Questar Pipeline Company tendered for filing and acceptance to be effective March 1, 1992, Seventeenth Revised Sheet No. 12, to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD-1 effective March 1, 1992.

Questar states that the Seventeenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.71897/Dth which is $0.35927/Dth higher than the currently effective rate of $2.35970/Dth. The demand base cost of purchased gas as adjusted increased $0.00061/Dth, from $0.00614/Dth to $0.00675/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20436, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such protests should be filed on or before February 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3273 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-2-30-000]**

## Trunkline Gas Co; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that Trunkline Gas Company (Trunkline) on January 30, 1992, tendered for filing the following revised sheet to its FERC Gas Tariff, Original Volume No. 1:

Ninety-First Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is March 1, 1992.

Trunkline states that the instant filing reflects a commodity rate decrease of (1.45¢) per Dt in projected purchased gas cost component.

Trunkline states that the tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchase Gas Adjustment Clause) of the General Terms and conditions in Trunkline's FERC Gas Tariff, Original Volume No. 1. Trunkline states that copies of this filing have been served on all jurisdictional sales customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20436, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 12, 1992. 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. 92-3261 Filed 2-4-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-2-56-000]**

## Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

February 5, 1992.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 30, 1992 tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

**FERC Gas Tariff, First Revised Volume No. 2**

3rd Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change in rates to Rate Schedule S-3 includes a decrease in purchased gas cost of $0.9401 per MMBtu as compared to the previously scheduled quarterly PGA filing.

The proposed effective date of the above filing is March 1, 1992. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by March 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-3268 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2471—Michigan]

## Wisconsin Electric Power Co.; Notice Soliciting Applications

February 5, 1992.

On December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Sturgeon Hydroelectric Project No. 2471, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2471 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Sturgeon River in Dickinson County, Michigan. The principal project works consist of: (a) A 217-foot-long concrete arch dam, a 14-foot-wide penstock intake, and a 7.5-foot-wide trash gate; (b) a reservoir of 248 acres; (c) a 7-foot-diameter, 260-foot-long penstock; (d) a powerhouse with an installed capacity of 800 kW; (e) a transmission line connection; and (f) appurtenant facilities.

Pursuant to § 16.20 of the Commission's regulations, the deadline for filing an application for new license and any competing license applications was December 31, 1991. No applications for license for this project were filed. Therefore, pursuant to § 16.25 of the Commission's regulations, the Commission is soliciting applications from potential applicants other than the existing licensee.

Pursuant to § 16.19 of the Commission's regulations, the licensee is required to make available certain information described in § 16.7 of the Commission's regulations. Such information is available from the licensee at Real Estate Department, Public Service Building, room 452, 231 West Michigan Street, Milwaukee, WI 53201.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) May apply for a license under part I of the Act and part 4 (except § 4.38) of the Commission's regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of § 16.8 of the Commission's regulations.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-3274 Filed 2-11-92; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

[FE Docket No. 91-103-LNG]

## Phillips Alaska Natural Gas Corporation and Marathon Oil Co.; Application To Amend Authorization to Export Liquefied Natural Gas

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of an application to amend authorization to export liquefied natural gas.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 26, 1991, of an application filed by Phillips Alaska Natural Gas Corporation (PANGC) and Marathon Oil Company (Marathon) to amend their existing export authorization to permit a twelve percent increase in exports of Alaskan liquefied natural gas (LNG) to Japan.

The application if filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 13, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Marathon is an Ohio corporation with principal offices in Houston, Texas, and is unaffiliated with PANGC. PANGC, a Delaware corporation with principal offices in Bartlesville, Oklahoma, is a wholly-owned subsidiary of Phillips 66 Natural Gas Company (P66NGC), which in turn is a subsidiary of Phillips Petroleum Company. DOE/FE Opinion and Order 261-B, issued December 19, 1991, transferred from P66NGC to PANGC the export authority held with Marathon.

Originally authorized by the Federal Power Commission in 1967, the PANGC-Marathon LNG exports have been extended and amended from time-to-time by DOE. Under DOE/ERA Opinion and Order 261, 1 ERA ¶70,130, and DOE/FE Opinion and Order 261-A, 1 FE ¶70,454, the applicants currently are authorized to export 52.0 TBtu of LNG per year, through March 31, 2004, under a pricing formula that is market responsive to other LNG prices and world energy prices. The LNG is exported from the applicant's Kenai Liquefaction plant in the Cook Inlet area of Alaska to two Japanese customers, the Tokyo Electric Company, Inc., and the Tokyo Gas Company, Ltd.

The parties to this export arrangement signed a letter of intent on October 31, 1991, to amend their gas purchase agreement. The new agreement provides for a twelve percent increase in exports between April 1, 1993, and March 31, 2004. Beginning April 1, 1993, the annual contract quantity (ACQ) would increase to 56.0 TBtu for the contract year 1993. The ACQ would be further increased to 64.6 TBtu beginning in the 1994 contract year, when new tankers are expected to be in service, through the end of the contract term. The new agreement provides sellers with an option, if exercised by March 31, 1994, to cancel the 64.4 TBtu ACQ. In addition, currently authorized provisions for annual sales of up to 106 percent of the ACQ remain unchanged.

In support of their application, PANGC and Marathon assert there is no evidence of domestic need, either national or regional, for the increased volumes of natural gas which is requested, and the Cook Inlet area has ample natural gas reserves to supply regional needs well beyond the current term of the export authority. Applicants also emphasize the benefits to Alaska and the Federal Government through continuing royalty payments and an improved U.S. balance of payments with Japan.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application,

should comment on these matters as they relate to the requested export authority. PANGC and Marathon assert the amendment is not inconsistent with the public interest for the reasons briefly described herein. Parties opposing the arrangement bear the burden of overcoming this assertion.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PANGC's and Marathon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 6, 1992.

**Anthony J. Como,**

*Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-3378 Filed 2-11-92; 8:45 am]

BILLING CODE 6450-01-M

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**[FE Docket No. 91-113-NG]**

## Tangram Transmission Corporation; Application to Export Natural Gas to Mexico

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 23, 1991, of an application filed by Tangram Transmission Corporation (Tangram) for blanket authorization to export up to 72 Bcf of natural gas to Mexico annually or up to 146 Bcf over a two-year term beginning on the date of first delivery.

Tangram intends to utilize existing pipeline facilities for the transportation of the volumes to be exported and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 13, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Tangram is a corporation organized under the laws of the State of Texas with its principal place of business at The Woodlands, Texas. Tangram requests authorization to export natural gas to Mexico for sale to a variety of purchasers. The natural gas would be supplied by various U.S. producers and exported under arrangements negotiated in response to market conditions.

The decision on the application for export authority will be made consistent with section 3 of NGA and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as application, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tangram's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 6, 1992.

**Anthony J. Como,**

*Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-3379 Filed 2-11-92; 8:45 am]

BILLING CODE 6450-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 1876]**

### Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

February 6, 1992.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed by February 27, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Codification of the Commission's Political Programming Policies. (MM Docket 91-168).

Number of Petitions Filed: 10.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-3326 Filed 2-11-92; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOUSING FINANCE BOARD

**[No. 92-55]**

### Community Support Requirements for Members of the Federal Home Loan Bank System

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** The Federal Housing Finance Board ("Finance Board") hereby gives notice that it has submitted to the Office of Management and Budget ("OMB") a request for review and approval of a new information collection entitled "Community Support Requirements for Members of the Federal Home Loan Bank System" in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

*Type of Review.* New information collection.

*Title:* Community Support Requirements for Members of the Federal Home Loan Bank System.

*Form Number:* Form FHFB 92-18.

*OMB Number:* New.

*Frequency of Response:* Biennially.

*Respondents:* Members of the Federal Home Loan Bank System.

*Number of Respondents:* 3,000.

*Number or Responses per Respondent:* 1 every other year.

*Total Annual Responses:* 1,500.

*Average Number of Hours per Response:* 6.0.

*Total Annual Burden Hours:* 9,000.

*Finance Board Contact:* Elaine L. Baker, (202) 408-2837, Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

*OMB Reviewer:* Gary Waxman, (202) 395-7340, Desk Officer for the Federal Housing Finance Board, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Act Project, Washington, DC 20503.

*Comments:* Comments on this information collection request should be received on or before March 13, 1992.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the Finance Board contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the Finance Board contact listed above.

**NEEDS AND USES:** Section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA," Pub. L. No. 101-73, 103 Stat. 183, Aug. 9, 1989) amended the Federal Home Loan Bank Act (12 U.S.C. 1430) by adding a new section 10(g). That new section directed the Finance Board to adopt regulations establishing standards of community investment or service for members of the Federal Home Loan Bank System to maintain continued access to long-term advances (loans).

The Finance Board adopted final implementing regulations that were published in the **Federal Register** on November 21, 1991 (56 FR 58639–58650). Those regulations require member institutions to submit once every two years a "Community Support Statement." This statement will include: (1) A copy of the Public Disclosure section from the member's most recent Performance Evaluation under the Community Reinvestment Act of 1977 (12 U.S.C. 2901) and, if applicable, a statement of how the member has or will address any deficiencies; (2) a narrative concerning the member's lending to first-time homebuyers; (3) a certification concerning any final judicial or administrative decisions concerning violations within the past two years of the Fair Housing Act (42 U.S.C. 3601 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), or similar state or local laws; and (4) any other such information the member chooses to submit.

The statute directs the Finance Board to evaluate the community investment or service of member institutions for continued access to long-term advances. Without the information requested, the Finance Board would not have at its disposal any consistent information for all member institutions upon which to base this evaluation.

Members whose community investment or service is judged inadequate may be required to submit a "Community Support Action Plan." The Finance Board will make a separate submission to OMB for the information collection associated with an Action Plan.

Dated: February 5, 1992.

**J. Stephen Britt,**

*Executive Director.*

[FR Doc. 92–3283 Filed 2–11–92; 8:45 am]

BILLING CODE 6725-01-M

## FEDERAL MARITIME COMMISSION

### South Carolina State Ports Authority; 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 10325. 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.:* 224–200614.

*Title:* South Carolina State Ports Authority/Lykes Bros. Steamship Co., Inc. Terminal Agreement.

*Parties:* South Carolina State Ports Authority, Lykes Bros. Steamship Co., Inc. ("Lykes").

*Synopsis:* This Agreement, filed February 3, 1992, provides that Lykes will be assessed a per container fee for various services performed. Lykes guarantees 125,000 net tons minimum throughput at the Port of Charleston per year. The term of the Agreement is 5 years with options to extend.

*Agreement No.:* 224–200615.

*Title:* South Carolina State Ports Authority/D.B., Turkish Cargo Lines Terminal Agreement.

*Parties:* South Carolina State Ports Authority, D.B. Turkish Cargo Lines.

*Synopsis:* This Agreement, filed February 3, 1992, provides that Turkish Cargo Lines will receive a discounted rate for certain container services performed in the Ports Authority's common user area. Turkish Lines guarantees a minimum throughout, 18 container vessel calls and 6 breakbulk vessel calls at the Port of Charleston per contract year. The term of the Agreement is 5 years.

*Agreement No.:* 202–011259–3.

*Title:* United States/Southern Africa Conference Agreement.

*Parties:* Empresa de Navegacao International, Lykes Bros. Steamship Co., Inc., Safbank Line, Ltd.

*Synopsis:* The proposed amendment adds a new Article 14(d) (Service Contracts), which provides that new members to the Agreement have no rights or obligations under service contracts which were effective prior to the effective date of their membership, unless agreed upon by unanimous vote of the participating members. It also modifies Article 16(b) (Agreements With Other Carriers and Persons) to set forth new provisions governing the rights and obligations of new members of the Conference.

*Agreement No.:* 203–011365.

*Title:* The "8900" Lines/P&O Containers, Ltd., Discussion Agreement.

*Parties:* The "8900" Lines, P&O Containers, Ltd.

*Synopsis:* The proposed Agreement authorizes the parties to discuss, exchange information and agree upon all aspects of transportation and service in the trade from U.S. Atlantic, Gulf and Pacific ports and inland points to Saudi Arabian, Persian Gulf and other Middle Eastern ports except Aden and Karachi, and inland points via such ports. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The parties have requested a shortened review period.

Dated: February 6, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–3320 Filed 2–11–92; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for March 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, a portion of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 210(d).

Summaries of the meeting and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

*Committee Name:* Clinical Subcommittee, Mental Health Special Projects Review Committee.

*Meeting Date:* March 13, 1992.

*Place:* La Jolla Village Inn, 3299 Holiday Court, La Jolla, CA 92037.

*Open:* March 13, 8:30 a.m.–9 a.m.

*Closed:* Otherwise.

*Contact:* Gwen Artis, room 9–C18 Parklawn Building, Telephone (301) 443–3944.

Dated: February 6, 1992.

**Peggy W. Cockrill,**

*Committee Management Officer; Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 92-3307 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-20-M

## National Institute on Drug Abuse; Meetings.

Pursuant of Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for March 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

*Committee Name:* Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.
*Meeting Date:* March 10-12, 1992.
*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.
*Open:* March 10, 9 a.m. to 9:30 a.m.
*Closed:* Otherwise.
*Contact:* Iris W. O'Brien, room 10-42, Parklawn Building, Telephone (301) 443-2620.

*Committee Name:* Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.
*Meeting Date:* March 10-12, 1992.
*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.
*Open:* March 10, 9 a.m. to 9:30 a.m.
*Closed:* Otherwise.
*Contact:* H. Noble Jones, room 10-22, Parklawn Building, Telephone (301) 443-9042.

*Committee Name:* Drug Testing Advisory Board, NIDA.
*Meeting Date:* March 19, 1992.
*Place:* Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
*Open:* 9 a.m. to 12:00 p.m.
*Closed:* Otherwise.
*Contact:* Donna M. Bush, Ph.D., room 9A-53, Parklawn Building, Telephone (301) 443-6014.

Dated: February 6, 1992.

**Peggy W. Cockrill,**

*Committee Management Officer; Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 92-3308 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-20-M

## National Institute on Alcohol Abuse and Alcoholism; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the advisory committee of the National Institute on Alcohol Abuse and Alcoholism for March 1992.

The initial review group will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C-20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4375).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

*Committee Name:* Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.
*Meeting Dates:* March 5-6, 1992.
*Place:* Holiday Inn Crowne Plaza, Rockville, Maryland 20852.
*Open:* March 5, 9 a.m.-10 a.m.
*Closed:* Otherwise.
*Contact:* Barbara Smothers, Ph.D., rm. 16C-26, Parklawn Bldg., Phone (301) 443-6106.

Dated: February 6, 1992.

**Peggy W. Cockrill,**

*Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 92-3309 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-20-M

## Centers for Disease Control

## Mine Health Research Advisory Committee: Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

**Federal Register** *Citation of Previous Announcement:* 57 FR 3759, January 31, 1992.

*Previously Announced Times and Dates:* 9 a.m.—5 p.m., February 19, 1992, 9 a.m.—12 noon, February 20, 1992.

*Change in the Meeting:* This meeting has been canceled.

*Contact Person for More Information:* Gregory R. Wagner, M.D., Director, Division of Respiratory Disease Studies, National Institution for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone 304/291-4474 or FTS 923-4474

Dated: February 6, 1992,

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 92-3297 Filed 2-11-92; 8:45 am]

BILLING CODE 4160-19-M

## National Institutes of Health

## National Cancer Institute (Division of Cancer Treatment Board of Scientific Counselors); Meeting

Pursuant to Public Law 92-463, notice is hereby given to the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, February 24-25, 1992, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 24 from 8:30 a.m. to approximately 5:30 p.m., and again on February 25 for approximately 11 a.m., until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by serveral programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on February 25 from 8:30 a.m. to approximately 11 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06,

National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–3257 Filed 2–11–92; 8:45 am]

BILLING CODE 4140–01–M

## National Center for Research Resources; Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council (NARRC), on February 19–21, 1992, which was published in the **Federal Register**, January 28 (57 FR 3209).

This Council was to have convened at 6:45 p.m., on February 19, 1992, to recess in open session for the Planning and Agenda Subcommittee. The meeting now will convene in open session from 7:30 to 8:30 a.m. on February 20, 1992, in Conference Room 3B41, Building 31, National Institutes of Health.

Dated: February 4, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–3248 Filed 2–11–92; 8:45 am]

BILLING CODE 4140–01–M

## National Center for Research Resources; Comparative Medicine Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Comparative Medicine Review Committee, National Center for Research Resources, National Institutes of Health.

The meeting will be held on March 8, 1992, at the Hyatt Regency, in the Old Georgetown Room, One Bethesda Center, Bethesda, MD 20814, and on March 9, 1992, at the National Institutes of Health, in Building 31, Conference Room 10, 9000 Rockville Pike, Rockville, MD 20892. The meeting will be open to the public as indicated below for a brief staff presentation on the current status of the Comparative Medicine Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Comparative Medicine Review Committee.

*Date of Meeting:* March 8–9, 1992.

*Place of Meeting:* Hyatt Regency Bethesda, Old Georgetown Room, One Bethesda Center, Wisconsin Avenue at Old Georgetown Road, Bethesda, MD 20814.

*Open:* March 8, 1992–7 p.m. until Recess.

*Place of Meeting:* National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Closed:* March 9, 1992–8:30 a.m. until Adjournment.

Mr. James J. Doherty, Acting Information Officer, National Center for Research Resources, 5333 Westbard Avenue, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Arthur D. Schaerdel, Scientific Review Administrator of the Comparative Medicine Review Committee, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A16, Bethesda, Maryland 20892, (301) 496–4390, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–3251 Filed 2–11–92; 8:45 am]

BILLING CODE 4140–01–M

## National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 26 and 27, 1992, in Building 31, Conference Room 9, 9000 Rockville Pike Bethesda, Maryland 20892.

This meeting will be open to the public on March 26, from 8 a.m. to approximately 9 a.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 26, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on March 27, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute. Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, 301–496–4236, will provide a summary of the meeting and roster of the committee members.

Dr. Jon Ranhand, Scientific Review Administrator (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 554, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; National Institutes of Health.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–3250 Filed 2–11–92; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Allergy and Infectious Diseases; Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on March 10-12, 1992, at the Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on March 10, 11, and 12 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on March 10 and 11, and from 9 a.m. until adjournment on March 12. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Madelon Halula, Acting Scientific Review Administrator, Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Control Data Building, room 4C22, Bethesda, Maryland 20892, telephone (301-496-8206), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-3249 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Child Health and Human Development; Meetings

Pursuant to Public law 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development of March 1992

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North Building, room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1486, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

*Name of Committee:* Population Research Committee.

*Scientific Review Administrator:* Dr. A.T. Gregoire, room 520, Executive Plaza North Building, Telephone: 301, 496-1485.

*Date of Meeting:* March 3-4, 1992.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

*Open:* March 3, 1992, 8 a.m.-9 a.m.

*Closed* March 3, 1992, 9 a.m.-5 p.m. March 4, 1992, 8 a.m.—adjournment.

*Name of the Committee:* Maternal and Child Health Research Committee.

*Scientific Review Administrator:* Dr. Gopal Bhatnagar, room 520, Executive Plaza North Building, Telephone: 301, 496-1485.

*Date of Meeting:* March 3-4, 1992.

*Place of Meeting:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

*Open:* March 3, 1992, 8 a.m.-9 a.m.

*Closed:* March 3, 1992, 9 a.m.-5 p.m. March 4, 1992, 8 a.m.—adjournment.

*Name of the Committee:* Mental Retardation Research Committee.

*Scientific Review Administrator:* Dr. Norman Chang, room 520, Executive Plaza North Building, Telephone: 301, 496-1485.

*Date of Meeting:* March 5-6, 1992.

*Place of Meeting:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

*Open:* March 5, 1992, 8 a.m.-9 a.m.

*Closed:* March 5, 1992, 9 a.m.-5 p.m March 6, 1992, 8 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Commitee Management Officer, NIH.*

[FR Doc. 92-3252 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Committee

Purusant to Public Law 92-463, notice is hereby given to the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, February 27-28, 1992, Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, MD, 20815, suite 1202.

This meeting will be open to the public on February 27 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on February 27, from 9:30 a.m. to recess and on February 28 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted

invasion of personal privacy. The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, room 805, Bethesda, Maryland 20892 (301/496-7575) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research 93.396, Cancer Biology Research; 93,397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-3253 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## National Cancer Institute; Meeting (Cancer Education Review Committee)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, February 24-25, 1992, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

This meeting will be open to the public on February 24 from 8:30 a.m. to 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)6, title 5, U.S.C. and section 10(d) of Public Law 922-463, the meeting will be closed to the public on February 24 from 9 a.m. to recess and on February 25 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301-496-5708), will provide a summary of meeting and a roster of committee members upon request.

Dr. John W. Abrell, Scientific Review Administrator, Cancer Education Review Committee, 5333 Westbard Avenue, room 832, Bethesda, Maryland 20892, (301-496-9767), will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control).

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-3254 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## National Cancer Institute; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on March 26-27, 1992. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 11 a.m. to recess on March 26 and from 9 a.m. to adjournment on March 27 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 9 a.m. to approximately 11 a.m. on March 26 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399 Cancer Control.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-3255 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, March 16, 1992. The meeting will be held in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:30 a.m. to 12 noon for concept review of proposed research projects. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 1 p.m. to adjournment for the review and discussion of previous site visit reports and responses, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, Building 31, room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-3251) will provide substantive Program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and

prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 6, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-3256 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## Social Security Administration

### Statement of Organization, Functions, and Delegations of Authority

Part S of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that chapter 4, the Office of the Deputy Commissioner for Systems, is being amended to reflect the establishment of new Staff and Division-level components and functions within the Office of Telecommunications (S4L). The new material and changes are as follows:

Section S4L.10 *The Office of Telecommunications*—(Organization):

Delete:

D. The Division of Network Communications Support (S4LA).

E. The Division of Communications (S4LB).

Add:

D. The Distributed Data Processing Management Staff (S4L-1).

E. The Telecommunications Resource Management Staff (S4LC).

F. The Division of IWS/LAN Engineering (S4LE).

G. The Division of Integrated Telecommunications Management (S4LG).

H. The Division of Wide-Area Network Engineering (S4LH).

I. The Division of Telecommunications Operations (S4LJ).

Section S4L.20 *The Office of Telecommunications*—(Functions):

Delete:

D. The Division of Network Communications Support (S4LA) in its entirety.

E. The Division of Communications (S4LB) in its entirety.

Add:

D. Distributed Data Processing Management Staff (S4L-1).

1. Directs the plans and activities to implement distributed data processing systems across SSA.

2. Initiates major program, subprogram, project and task activities in support of the implementation of Distributed Data Processing Management Staff (DDPMS) plans outlined in the Integrated System Plan and the Agency Strategic Plan.

3. Oversees/coordinates all DDPMS implementation activity among all systems components including the incorporation of office automation, programmatic systems, existing distributed-type systems, stand-alone personal computer-based systems, stand-alone personal computer-based systems, pilot systems and user-developed systems into a unified distributed processing environment.

4. Develops and manages the DDPMS procurement plan, outlining all acquisitions related to the project. Manages the development of distributed data processing acquisitions in the intelligent workstation (IWS) and local area network (LAN) areas.

5. Develops and manages the delivery, implementation and acceptance plans for DDPMS acquisitions.

6. Manages the evaluation process for all technology substitutions, technology refreshments, upgrades and unsolicited proposals for DDPMS. Manages the administration of DDPMS contracts to include amendments, cancellations and renewals.

7. Establishes and maintains the coordination and liaison interfaces to all other systems components, all SSA central office and field components and external committees, conferences and organizations involved in and affected by DDPMS.

8. Approves technical specifications, technical evaluation criteria, technology substitution specifications for DDPMS-related workstation, network and application acquisitions.

9. Directs project activities to ensure that SSA-level DDPMS initiatives maintain compatibility with HHS-wide and Governmentwide Information Technology Systems (ITS) standards.

E. The Telecommunications Resource Management Staff (S4LC).

1. Manages, plans and coordinates the activities relating to business and financial planning of SSA's telecommunications needs.

2. Manages and plans for the acquisition of network hardware, software and related services. Controls, reviews and tracks status of telecommunications requisitions through the procurement process.

3. Coordinates within the Office of Telecommunications (OTC) and SSA the planning of the design and configuration of the telecommunications network.

4. Serves as focal point for procurement of telecommunications and related equipment and services.

5. Coordinates within OTC the development of planning documents assessing current and future technology for suitability and impact on the telecommunications network.

6. Develops short-term and long-range telecommunications strategic plans and 5-year telecommunications macro strategic plans.

7. Assists HHS/SSA users in determining network requirements and interfacing needs. It is responsible for the coordination of strategic and tactical planning and implementing telecommunications expansion.

8. In conjunction with other Systems components, develops user service level agreements in support of the telecommunications solutions.

9. Develops, executes and monitors the telecommunications network portion of the ITS budget. Monitors budgetary commitments for contract awards of network telecommunications acquisitions.

10. Maintains a database of telecommunications hardware and sofeware and ensures proper disposition of telecommunications equipment no longer in use.

F. The Division of IWS/LAN Engineering (S4LE).

1. Responsible for all aspects of engineering, design, configuration, implementation and support of LAN Operating System (OS) software, telecommunications and connectivity service functions at SSA.

2. Responsible for telecommunications and connectivity projects, including acquisition, implementation, integration and control.

3. Develops, disseminates and enforces standards and policies relating to workstations, workstation configurations, peripherals, LANs, LAN OS, local bridges and routers and related customer support and service.

4. Works with SSA users to provide solutions to LAN telecommunications needs that are consistent with SSA-network architecture policies; determines network and interfacing hardware needs, implementing solutions, planning and expansion and determines staff hardware training needs. It assists SSA telecommunications users in determining and refining services and support requirements, configuration and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

5. Provides a full range of initial and followup telecommunications and connectivity services and support for SSA users in network requirements analysis, system design, LAN needs determination, engineering, implementing, network control, OS software support and training.

6. Supports operating system and connectivity software on the LANs and IWS. It researches and tests current off-the-shelf products for their network configuration to LAN and workstation needs.

7. Develops and distributes research papers on applied technology and its relationship to existing and future telecommunications and connectivity requirements. It also develops alternate systems configurations to meet specific alternative requirements (non-traditional technology approaches).

8. Solves network problems by applying information on state-of-the-art OS, telecommunications and connectivity software and hardware currently available in the marketplace. It develops turn-key telecommunications systems and special menus to meet unusual customer requirements.

G. The Division of Intergrated Telecommunications Management (S4LG).

1. Plans and manages the strategic and tactical direction of the SSA voice communications and voice-data integration programs.

2. Provides technical and analytical support for the National 800 Number and other communications initiatives and programs.

3. Provides and manages voice communications systems hardware, software, services and ancillary equipment for SSA nationwide.

4. Directs the acquisition, operations, maintenance, retention and disposal of voice communications systems and services SSA-wide. Develops and administers voice communications ITS contracts.

5. Administers Federal Telecommunication System (FTS) FTS 2000 services SSA-wide and supports OTC in representing SSA in all related negotiations with SSA, General Services Administration and FTS vendors and carriers.

6. Directors the evaluation, acquisition, installation, operation and disposal of voice communications systems and services for SSA nationwide.

7. Serves as the SSA focal point for voice communications capacity planning.

8. Manages SSA-wide programs for imaging, video, facsimile, satellite, radio and emergency communications.

9. Manages SSA headquarters voice communications systems.

10. Serves as SSA-level liaison with Federal, State and other government and private-sector entities on voice communications and voice-data integration.

11. Manages within SSA the development and application of emerging voice communications technology.

12. Manages technical solutions for "800" and other toll-free services SSA-wide.

13. Manages the acquisition of data circuits.

H. The Division of Wide-Area Network Engineering (S4LH).

1. Directs and design, development, implementation, maintenance and support of specialized data communications software to support SSA's international network (SSANet).

2. Responsible for network design, connectivity, management, automation, availability, performance and capacity planning modeling.

3. Researches network prototypes and performs testing of new network technologies and implements and monitors network standards.

4. Supports SSA components as well as other Government agencies to provide optimum network interface design, management capabilities, connectivity, availability and response time.

5. Integrates and validates new network hardware, software products, versions and maintenance levels into SSANet and SSANet connectivity management.

6. Manages and coordinates all change management system control relating to network hardware and software changes to SSANet under the auspices of the change management facility.

7. Performs Level 3 network monitoring and problem determination for the SSANet.

8. Develops and implements a network backup recovery.

9. Performs network software planning, installation and management at all remote sites.

10. Serves as the SSA-level liaison with Federal, State, and local Government agencies and with the private sector to integrate them into the SSA network.

11. Responsible for SSANet software distribution and version management.

12. Interfaces with SSANet users to determine the impact of new applications and workloads and supports user liaison and systems development activities of other SSA components in the resolution of network technical and operational problems.

13. Manages communications software changes to ensure compatibility with hardware modifications at Central Office and all remote network platform locations.

14. Directs and planning, analysis and design of specialized network software systems for providing information relevant to the development of existing and proposed data communications systems.

I. The Division of Telecommunications Operations (S4LJ).

1. Manages the installation, relocation and operation of SSA's telecommunications network facilities for the transmission of program and management data over SSA established networks.

2. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

3. Develops and directs the implementation of new procedures and updates existing procedures for network node operations.

4. Escalates outages to vendor management for prompt resolution and is responsible for the repair of advanced communications electronics equipment.

5. Provides emergency support services for equipment reconfiguration as well as repair, assembly/disassembly and installation of advanced telecommunications electronics.

6. Serves as the initial point of contact for user and technical problem determination for telecommunications. Diagnoses data-center hardware and network problems and coordinates network operations issues with applications and systems support staff.

7. Monitors and controls functions for the nationwide telecommunications system. Develops operational procedures to modernize and streamline network operation and develops plans for automation.

8. Manages traffic flow between telecommunications complexes and other SSA complexes.

9. Communicates status of the network to other network nodes and advises users of abnormal or extraordinary situations affecting network operations.

10. Monitors voice communications operations, analyzes equipment problems and effects proper maintenance and repair.

Dated: February 3, 1992.

**Ruth A. Pierce,**

*Deputy Commissioner for Human Resources.*

[FR Doc. 92-3337 Filed 2-11-92; 8:45 am]

BILLING CODE 4190-29-M

## Public Health Service

### National Toxicology Program; National Toxicology (NTP) Board of Scientific Counselors' Meeting; Cancellation

The meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee scheduled for March 17-18, 1992, has been cancelled. The draft Technical Reports to be peer reviewed at this meeting will be reviewed at the next meeting of the Subcommittee on June 23 and 24, 1992.

For more information, contact the Executive Secretary Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541-3971, FTS 629-3971).

Dated: February 6, 1992.

**Kenneth Olden,**

*Director, National Toxicology Program.*

[FR Doc. 92-3391 Filed 2-11-92; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N-92-3241; FR-2983-N-02]**

### Section 312 Rehabilitation Loan Program; Announcement of Funding Awards for Loans Exceeding $200,000

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for rehabilitation loans that exceed $200,000 under the Section 312 Rehabilitation Loan Program. This announcement contains the names and addresses of the award winners and the amounts of the awards.

**DATES:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard R. Burk, Director, Program Operations Division, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7168, 451 South 7th Street, SW., Washington, DC 20410. Telephone (202) 708-1367. The TDD number for the hearing impaired is (202) 708-0564. (These telephone numbers are not toll-free).

**SUPPLEMENTARY INFORMATION:** Section 312(b) of the Housing Act of 1964, as amended, 42 U.S.C. 1452b ("the Act"), authorizes HUD to make loans for rehabilitation for single-family, multifamily residential, and mixed-use and nonresidential properties in federally-aided Community Development Block Grant and Urban Homesteading areas identified by local governments. Pursuant to the HUD Appropriations Act for Fiscal Year 1991 (Pub. L. 101-507, approved November 5, 1990), a Notice of Funding Availability (NOFA) was published in the **Federal Register** on June 10, 1991 announcing funding of the section 312 Loan Program for Fiscal Year 1991 for loans $200,000 or above. Although section 312 funds are available for all types of loans, only loan applications over $200,000 were addressed by the NOFA. The section 312 program is a demand-type program and thereby not normally subject to rules of competition. However, the Department made loans $200,000 or above subject to the requirements governing competitive programs under section 102 of the Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235), as implemented by regulations at 24 CFR part 12.

The Department received 48 applications for loans exceeding $200,000 and approved 23 loans. The Appropriations Act for FY 1991 anticipated the availability of $144 million for Section 312 rehabilitation loans derived from repayments and recaptures of prior years obligations. The amount of funds derived from repayments and recaptures from October 1, 1990 through September 30, 1991 was estimated to be $149,514,378. From the available funds, $63,950,850 was obligated for 1,425 loans during Fiscal 1991. Loans for the rehabilitation of 1,330 single-family homes accounted for $37,747,450. In addition, $7,323,850 was obligated for individual loans of less than $200,000 for the rehabilitation of 72 multi-family and/or commercial buildings, and $18,429,050 was obligated for 23 individual loans which exceeded $200,000 for the rehabilitation of eligible multi-family and commercial buildings. This notice of funding awards pertains to those funds obligated for section 312 Rehabilitation loans of $200,000 or more

Pursuant to section 102 of the HUD Reform Act of 1989, as implemented by 24 CFR part 12, the Department issued a NOFA to announce the availability of Section 312 loan funds for loans $200,000 or more and to describe the application and review procedures. This NOFA was published in the **Federal Register** on June 10, 1991 (56 FR 26728) and stated that applications for section 312 Rehabilitation loans exceeding $200,000 would be accepted by the Department through August 1, 1991. All such loan applications were received, logged-in and considered in the order in which they were received. The Department received and reviewed 48 applications for completeness and conformance with the guidelines and regulations of the section 312 Rehabilitation Loan Program. All applications were reviewed in compliance with the procedures of the NOFA. The Department approved 23 section 312 Rehabilitation loans over $200,000, which collectively account for $18,429,050. The Department has obligated funds for the loans and has notified these applicants of the funding reservations. The obligated loans listed below are subject to the requirements of loan closing pursuant to the regulations and provisions of the section 312 Program.

In compliance with section 102 (b) of the HUD Reform Act of 1989, as implemented by regulation at 24 CFR part 12, the following is a listing of approved Section 312 loans for $200,000 or more:

| Applicant(s) | Project | Amount |
|---|---|---|
| Brattleboro Housing Partnership, P.O. Box 1936, Brattleboro, VT 05301 | Abbott Block, 2-4 Canal Street, Brattleboro, VT 05301 | $580,900 |
| Vermont Housing Enterprise, Inc., P.O. Box 397, Montpelier, VT 05601 | 30 South Street, White River Junction, VT 05001 | 245,000 |
| Vermont YWCA, 278 Main Street, Burlington, VT 05401 | YWCA of Burlington, 278 Main Street, Burlington, VT 05401 | 254,000 |
| Loretto Housing Dev. Fund Co., Inc., 700 East Brighton Ave., Syracuse, NY 13205. | Loretto Housing, 750 East Brighton Ave., Syracuse, NY 13202 | 2,512,500 |
| Park Avenue Tenants Assoc., 329 Par Avenue, East Orange, NJ 07107 | 329 Park Avenue, East Orange, NJ | 1,306,500 |
| Teresa Mann, 89-10 Whitney Ave., Elmhurst, NY 11373 and Chi Kao, 46-25 88th Street, Elmhurst, NY 11373. | 187 Jefferson Avenue, Brooklyn, NY | 301,000 |

| Applicant(s) | Project | Amount |
|---|---|---|
| Kenneth Hoyte & Gail Hoyte, 149a Lexington Avenue, Brooklyn, NY 11216. | 1073-75 Bedford Avenue, Brooklyn, NY 11216 | 267,000 |
| Andre Dache, 959 Kent Avenue, Brooklyn, NY 11238 | 884-886 Fulton Street, Brooklyn, NY 11238 | 234,000 |
| Rivpin-HDFC, P.O. Box 1394, Stuyvesant Station, New York, NY 10009 | 515 East 15th Street, New York, NY 10009 | 301,500 |
| Aaron From, 500 B Grand Street, New York, NY 10002 and Leonard Greher, 455 FDR Drive, New York, NY 10002. | 280 St. Ann's Avenue, Bronx, NY 10454 | 277,000 |
| Beatream E. Davis, 34-18 110th Street, Queens, NY 11368 | 255 Van Buren Street, Brooklyn, NY 11221 | 219,500 |
| Lamarca Holding Corporation, 101 South Bergen Place #201, Freeport, NY 11520. | 8806 Bay Parkway, Brooklyn, NY 11214 | 272,900 |
| Samuel & Carol Allen, 137 Bessida Street, Bloomfield, NY 07003 | 372-374 South Orange Ave., Newark, NJ 07103 | 234,000 |
| Hassan Kia, 9 First Street, Greenvale, NY 11548 | 48 East 105th Street, New York, NY 10029 | 320,000 |
| Savannah Street Associates, 1445 Pennsylvania Avenue, SE., Washington, DC 20002. | Savannah Garden Apartments, 1301 Savannah Street. SE., Washington, DC 20032. | 1,500,000 |
| Walkers Point Grove St. Ltd., Prtns., 914 South 5th Street, Milwaukee, WI 53204. | Walkers Point, 914 South 5th Street, Milwaukee, WI 53204 | 300,000 |
| Grainger Ltd. Partnership, Haymarket Revitalization, Inc., 335 North 8th Street, Lincoln, NE 68508. | Grainger Building, 744 O Street, Lincoln, NE 68508 | 971,000 |
| Reggie and Anne Crossan, 8 West 6th Street, Eureka, CA 95501 | 506 A Street, Eureka, CA 95501 | 288,700 |
| Park Place General Partners, West 505 Riverside, Suite 500, Spokane, WA 99201. | The Edge Cliff, South 500 Park Road, Spokane, WA 99206 | 4 019,500 |
| Ronald & Julie Wells, 911 East 20th Street, Spokane, WA 99203 and Clarence H. Barnes, 614 West 17th Avenue, Spokane, WA 99203 and DBA Finch Hall Properties, 911 East 20th Avenue, Spokane, WA 99203. | Finch Hall, 852 North Summit Avenue, Spokane. WA 99201 | 469 000 |
| Paul & Meiyea Liao, 2816 29th Avenue, West, Seattle, WA 98199 | 523-525 Pine Street, Seattle, WA 98101 | 2,780,000 |
| Spokane Care Services, Inc., 415 E Sprague, P.O. Box 2845, Spokane. WA 99220 | Spokane Care Center, 165 South Howard Road, Spokane. WA 99201 | 412,550 |
| Wells & Company Renovation Partners II, East 911 20th Avenue, Spokane, WA 99203 | Hotel Vallamount, West 1324 First Avenue. Spokane, WA 99202 | 362,500 |
| Total | | $18 429,050 |

Dated: February 6 1992

**Anna Kondratas,**

*Assistant Secretary for Community Planning and Development*

[FR Doc 92-3346 Filed 2-11-92; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-020-02-4370-12]

### Salt Lake District; Temporary Land Closure

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary land closure to all travel.

**SUMMARY:** Notice is hereby given that public lands as listed below in the Cedar Mountain area, Tooele County, are closed to all foot, bicycle, horseback and motorized travel from February 15, 1992 through March 15, 1992 to ensure a safe, cost effective wild horse capture in accordance with 43 CFR 8364.1 and 8360.0-7. Temporary closure of public lands is within:

**Salt Lake Meridian, Utah**

T. 2 S., R. 10 W.,
T. 2 S., R. 11 W.,
T. 3 S., R. 10 W.,
T. 3 S., R. 11 W.,
T. 4 S., R. 10 W.,
T. 4 S., R. 11 W.,

This closure does not restrict travel by government agencies or private enterprises including current BLM permittees conducting official duties.

The Bureau of Land Management will be capturing wild horses in the Cedar Mountain area during the time period of February 15 through March 15, 1992. Heavy concentrations of wild horses are causing severe over grazing of vegetative resources around critical watering areas on sections of the mountain. In order for the removal efforts to be conducted in the most humane, cost effective method possible, it is essential that wild horse distribution and movement into trapping areas not be altered by horseback riders or vehicles moving into the capture area.

For more information, contact: Howard Hedrick, Bureau of Land Management, Pony Express Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977-4300.

**Jordon C. Pope,**

*Assoc. District Manager.*

[FR Doc. 92-3288 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-020-02-4320-02]

### Meeting; Montana

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Miles City District Advisory Council will meet Tuesday, April 28, 1992 at 10 a.m. The meeting will be held in the District Office Conference Room on Garryowen Road. Specific agenda items to be discussed are the FY92 budget and updates on the Brewer Ranch, Cherry Creek Dam, the weed control program, the wild horse sanctuaries, Pompeys Pillar, Fort Meade, guides and outfitters, and effects of land exchanges and purchases on school taxation.

The meeting is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301 or phone (406) 232-4331.

**Darrel G. Pistorius,**

*Acting District Manager.*

[FR Doc. 92-3332 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-020-02-4320-02]

## Meeting, Montana

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Miles City District Grazing Advisory Board will meet Thursday, May 21, 1992 at 10 a.m. The meeting will be held in the District Office Conference Room on Garryowen Road.

The agenda for the meeting will include:

(1) The FY92 District budget.

(2) Weed control funding and program results.

(3) Range improvement fund collections and expenditures.

(4) Endangered species reports.

(5) Drought policy.

The meeting is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301 or phone (406) 232-4331.

**Darrel G. Pistorius,**

*Acting District Manager.*

[FR Doc. 92-3333 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-DN-M

[AK-919-02-4830-02-ADVB]

## Northern Alaska Advisory Council

The Northern Alaska Advisory Council has postponed its public meeting, scheduled for Thursday, February 20, 1992.

The new date for the meeting will be announced in the **Federal Register** 30 days in advance. For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Dated: February 5, 1992.

**Helen M. Hankins,**

*Designated District Manager.*

[FR Doc. 92-3295 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-JA-M

[WY-010-02-4320-10]

## Meeting of the Worland District Grazing Advisory Board.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the schedule and agenda of a meeting of the Worland District Grazing Advisory Board.

**DATES:** March 25, 1992, 10 a.m.

**ADDRESSES:** Bureau of Land Management, Conference Room, 101 South 23d Street, Worland, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Darrell Barnes, District Manager, Worland District Bureau of Land Management, P.O. Box 119, Wyoming 82401, (307) 347-9871.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include.

1. Discussion of the Worland District Grazing Advisory Board Charter.
2. Election of a chairperson and a vice chairperson.
3. Review of New Bureau policy for use of 8100 funds.
4. Review of allotment management plans.
5. Review of fiscal year 1991-92 range projects and discussion and recommendations for proposed 1993 range improvement projects.
6. Review of range program summary progress.
7. Briefing concerning the Grass Creek Area Planning.
8. Update on the fence modification proposal in Washakie Resource Area.
9. Wild horse management update.
10. Opportunity for the public to present information or make comments.

The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, at the above address by March 2, 1992.

Dated: February 6, 1992.

**Bruce Carroll,**

*Acting District Manager.*

[FR Doc. 92-3299 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-050-09-4212-21; CACA 29460]

## Lease of Public Land; Butte County; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public land has been found suitable for an occupancy lease under authority of the Federal Land Policy and Management Act of 1976:

**Mount Diablo Meridian**

T. 22 N., R. 4 E.,

Sec. 6, SW¼NW¼SE¼SW¼SE¼

Approximately 1.25 acres.

A lease, for a 30-year period, will be entered into with Robert J. Wray, to resolve a survey-related trespass. The public land will be leased at fair market rental.

**EFFECTIVE DATE:** For a period of 45 days from publication of this notice, the public is invited to comment on the proposed lease. Comments may be sent to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

**FOR FURTHER INFORMATION CONTACT:** Patricia Cook, Realty Specialist, at the address above.

**Francis Berg,**

*Acting Area Manager.*

[FR Doc. 92-3238 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-056-4410-10:GP2-121]

## Intent To Prepare a Plan Amendment to the Brothers/LaPine Resource Management Plan; Deschutes and Crook Counties, OR

February 3, 1992.

**AGENCY:** U.S. Department of Interior, Bureau of Land Management, Prineville District, Prineville, Oregon.

**ACTION:** To amend the Brothers/LaPine Resource Management Plan for Public Lands in the vicinity of the Bend, Redmond and Sisters communities.

**SUMMARY:** Rapid growth in the area has caused increased competition for use of public lands. The Prineville District is responding to public concerns and is in the issue scoping phase in the preparation of an Urban-Interface Plan. Land use competition centers around land tenure agreements such as Recreation and Public Purpose Act leases, land exchanges, and land disposal; and recreational uses. Recreational uses in the area include off-highway vehicle use, horseback riding, shooting, archery, nature study, hiking, model airplanes, star gazing, paintball, cycling, etc. Other concerns have risen over wildlife habitat, vandalism, law enforcement, illegal activities such as dumping, and citizen involvement in land management decisions.

For additional information regarding issue scoping or the Urban-Interface

planning process contact Sharon Netherton or Phil Paterno at the Bureau of Land Management, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754, telephone (503) 447-8766 or 447-8724 respectively.

Interested parties may submit issues, concerns or alternatives to the above address until March 15, 1992.

Dated: February 3, 1992.

**James L. Hancock,**

*District Manager, Prineville District Office.*

[FR Doc. 92-3239 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-33-M

## Bureau of Land Management

**[ES-962-4950-13; ES-044997, Group 27, Missouri]**

### Filing of Plat of Dependent Resurvey

The plat, in ten sheets, of the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivision lines, and a portion of U.S. Survey No. 727, and the survey of the subdivision of certain sections; certain metes-and-bounds surveys and the survey of road easements necessary to delineate the Wappapello Lake Acquisition Boundary in Township 28 North, Range 5 East, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on March 25, 1992.

The survey was made upon request submitted by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 25, 1992. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Stephen G. Kopach,**

*Associate Deputy State Director for Cadastral Survey.*

[FR Doc. 92-3236 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-GJ-M

**[ES-962-4950-13; ES-045002, Group 28, Missouri]**

### Filing of Plat of Dependent Resurvey and Subdivision of Sections 7 and 18

The plat, in two sheets, of the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 7 and 18; certain metes-and-bounds surveys, and the survey of road easements necessary to delineate the Wappapello Lake Acquisition Boundary in Township 28 North, Range 6 East, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on March 25, 1992.

The survey was made upon request submitted by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 25, 1992. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Stephen G. Kopach,**

*Associate Deputy State Director for Cadastral Survey.*

[FR Doc. 92-3237 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-GJ-M

**(CA-060-343-7122-10-D063; CACA 28709)**

### Amendment to Withdrawal Application and Opportunity for Public Meeting; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Department of the Army has filed an application to amend its withdrawal proposal to expand the Army's National Training Center at Fort Irwin to include an additional 229,200 acres. These additional acres will be analyzed as an alternative in the Environmental Impact Statement currently being prepared on the proposed expansion of Ft. Irwin. A separate Notice of Scoping Update will be issued requesting input on this new alternative. This notice provides a public comment period and the opportunity for a public meeting as to the amended portion of the application. This notice closes the lands from surface entry and mining through September 30, 1993, the date the segregative period provided by the original application will terminate. The lands will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by May 12, 1991.

**ADDRESSES:** Comments and meeting requests should be sent to Sharon Paris, Environmental Coordinator, BLM, 150 Coolwater Lane, Barstow, California 92311-3221, 619-256-3591.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, 916-978-4820.

**SUPPLEMENTARY INFORMATION:** On January 30, 1992, the United States Department of the Army filed an application to withdraw additional public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The lands are described as follows:

**San Bernardino Meridian**

T. 18 N., R. 3 E.,
- Sec. 13, N½ and SW¼, unsurveyed;
- Secs. 14 and 15, unsurveyed;
- Secs. 20 to 24, inclusive.

T. 18 N., R. 4 E.,
- Sec. 13, S½, unsurveyed;
- Sec. 14, S½, partly unsurveyed;
- Sec. 15, S½;
- Sec. 17, S½;
- Sec. 18, S½;
- Sec. 19;
- Secs. 20 and 21, partly unsurveyed;
- Sec. 22;
- Secs. 23 and 24, partly unsurveyed.

T. 17 N., R. 5 E.,
- Sec. 1, excluding patented land, unsurveyed;
- Sec. 2, excluding patented land, unsurveyed;
- Sec. 3, excluding patented land, unsurveyed;
- Sec. 4, unsurveyed;
- Sec. 5, excluding patented land, unsurveyed;
- Sec. 6, excluding patented land, unsurveyed;
- Sec. 7, unsurveyed;
- Sec. 8, excluding patented land, unsurveyed;
- Secs. 9 to 12, inclusive, unsurveyed.

T. 18 N., R. 5 E.,
- Sec. 13, S½;
- Sec. 14, S½;
- Sec. 15, S½, excluding patented land, partly unsurveyed;
- Sec. 17, S½; unsurveyed;
- Sec. 18, S½; excluding patented land, partly unsurveyed;
- Sec. 19, excluding patented land, partly unsurveyed;
- Sec. 20, unsurveyed;
- Sec. 21, excluding patented land, unsurveyed;
- Sec. 22, excluding patented land, partly unsurveyed;
- Sec. 23, partly unsurveyed;
- Sec. 24;
- Sec. 25, partly unsurveyed;
- Sec. 26, excluding patented land, unsurveyed;

T. 18 N., R. 5 E. (continued)
- Sec. 27, excluding patented land, unsurveyed;
- Sec. 28, excluding patented land, partly unsurveyed;
- Secs. 29 to 33, inclusive, unsurveyed;
- Sec. 34, excluding patented land, unsurveyed;
- Sec. 35, excluding patented land, unsurveyed.

T. 16 N., R. 6 E.,
Sec. 1, excluding patented land, unsurveyed;
Sec. 2, unsurveyed;
Sec. 11, unsurveyed;
Sec. 12, excluding patented land, unsurveyed;
Sec. 13, excluding patented land, unsurveyed;
Sec. 14, unsurveyed;
Secs. 23 to 26, inclusive, unsurveyed;
Sec. 35, unsurveyed.
T. 17 N., R. 6 E.,
Secs. 1 to 4, inclusive, unsurveyed;
Sec. 5, excluding patented land, unsurveyed;
Sec. 6, excluding patented land, unsurveyed;
Sec. 7, excluding patented land, unsurveyed;
Sec. 8, excluding patented land, unsurveyed;
Secs. 9 to 15, inclusive, unsurveyed;
Secs. 17 and 18, unsurveyed;
Secs. 22 to 27, inclusive, unsurveyed;
Secs. 34 to 35, unsurveyed;
T. 18 N., R. 6 E.,
Secs. 1 to 4, inclusive;
Sec. 5, lots 1, 2, 7, 8, 9, 10, 11, and 12;
Sec. 8, E½;
Secs. 9 to 15, inclusive;
Sec. 17, S½ and NE¼;
Sec. 18, S½;
Secs. 19 to 25, inclusive;
Secs. 26 to 30, inclusive, partly unsurveyed;
Sec. 31, excluding patented land, unsurveyed;
Secs. 32 to 35, inclusive, unsurveyed;
T. 19 N., R. 6 E.,
Secs. 25 and 26;
Sec. 27, partly unsurveyed;
Sec. 28, unsurveyed;
Sec. 29, E½, unsurveyed;
Sec. 32, E½, unsurveyed;
Sec. 33, partly unsurveyed;
Secs. 34 and 35.
T. 14 N., R. 7 E.,
Secs. 10 to 12, inclusive.
T. 16 N., R. 7 E.,
Sec. 1;
Sec. 2, partly unsurveyed;
Secs. 3 to 5, inclusive, unsurveyed;
Sec. 6, excluding patented land, unsurveyed;
Sec. 7, excluding patented land, unsurveyed;
Secs. 8 to 11, inclusive, unsurveyed;
Secs. 12 and 13;
Secs. 14 and 15, unsurveyed;
Secs. 17 to 23, inclusive, unsurveyed;
Secs. 24 and 25;
Secs. 26 to 34, inclusive, unsurveyed;
Sec. 35, partly unsurveyed.
T. 17 N., R. 7 E.,
Secs. 1 to 3, inclusive;
Secs. 4 and 5, partly unsurveyed;
Secs. 6 to 9, inclusive, unsurveyed;
Secs. 10 to 14, inclusive;
Sec. 15, partly unsurveyed;
Secs. 17 to 22, inclusive, unsurveyed;
Secs. 23 to 26, inclusive;
Secs. 27 to 34, inclusive, unsurveyed;
Sec. 35.
T. 18 N., R. 7 E.,
Secs. 13 to 15, inclusive;
Sec. 17, partly unsurveyed;
Secs. 18 and 19, unsurveyed;
Sec. 20, partly unsurveyed;
Secs. 21 to 29, inclusive;
Sec. 30, partly unsurveyed;
Sec. 31, unsurveyed;
Sec. 32, partly unsurveyed;
Secs. 33 to 35, inclusive.
T. 14 N., R. 8 E.,
Secs. 6 and 7.
T. 15 N., R. 8 E.,
Sec. 1, partly unsurveyed;
Secs. 2 to 11, inclusive;
Sec. 12, partly unsurveyed;
Secs. 14 and 15;
Secs. 17 to 20, inclusive;
Secs. 29 to 31, inclusive.
T. 16 N., R. 8 E.,
Sec. 1, excluding patented land, unsurveyed;
Sec. 2, excluding patented land, partly unsurveyed;
Sec. 3, partly unsurveyed;
Secs. 4 to 15, inclusive;
Secs. 17 to 35, inclusive.
T. 17 N., R. 8 E.,
Secs. 1 to 15, inclusive;
Secs. 17 to 20, inclusive;
Secs. 21 to 23, inclusive, partly unsurveyed;
Secs. 24 to 27, inclusive, unsurveyed;
Sec. 28, partly unsurveyed;
Secs. 29 to 32, inclusive;
Sec. 33, partly unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 18 N., R. 8 E.,
Secs. 13 to 15, inclusive, partly unsurveyed;
Secs. 17 to 21, inclusive;
Secs. 22 to 24, inclusive, partly unsurveyed;
Secs. 25 to 35, inclusive.
T. 15 N., R. 9 E.,
Secs. 5 and 6, unsurveyed.
T. 16 N., R. 9 E.,
Secs. 5 and 6, partly unsurveyed;
Secs. 7 and 8;
Secs. 17 to 20, inclusive;
Sec. 29, unsurveyed;
Sec. 30, partly unsurveyed;
Secs. 31 and 32, unsurveyed.
T. 17 N., R. 9 E.,
Secs. 5 to 8, inclusive;
Secs. 17 and 18;
Sec. 19, partly unsurveyed;
Sec. 20;
Secs. 29 and 30, partly unsurveyed;
Secs. 31 and 32, unsurveyed.
T. 18 N., R. 9 E.,
Secs. 17 to 20, inclusive;
Secs. 29 to 32, inclusive.

The areas described aggregate approximately 229,200 acres in San Bernardino County.

Effective on the date of publication, the additional acreage is subject to the requirements set forth in the original withdrawal application notice published in the **Federal Register**, 56 FR 49792, October 1, 1991.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the amended application may present their views in writing to Sharon Paris, Environmental Coordinator, of the Bureau of Land Management at the address shown above.

Dated: February 6, 1992.

**Nancy J. Alex,**

*Chief, Lands Section.*

[FR Doc. 92-3300 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-40-M

## Minerals Management Service

### Outer Continental Shelf; Adoption of NAD 27-NAD 83 Datum Transformation Software

This document is notification that the Department of the Interior, Minerals Management Service (MMS) has adopted NADCON version 2.00 (v2.00) as the Agency's standard horizontal datum transformation software. NADCON v2.00 will be used to transform MMS Outer Continental Shelf (OCS) positional coordinates between the North American Datums of 1927 (NAD 27) and 1983 (NAD 83). (For MMS purposes the World Geodetic System of 1984 (WGS 84) is considered equivalent to NAD 83 offshore of Alaska and the conterminous United States.)

NADCON v2.00 is available from the Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, National Geodetic Survey (NGS), Information Services Center, Rockville, Maryland 20852, (301) 443-8631.

For technical information, contact Alice Drew, Senior Geodesist, MMS, Mapping and Survey Group, Denver, Colorado, (303) 236-7050 or Dave Doyle, Senior Geodesist, NGS, Horizontal Network Branch, (301) 443-8684.

Dated: February 7, 1992.

**Thomas Gernhofer,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 92-3338 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Cape Cod National Seashore, South Wellfleet, MA; Environmental Assessment for Race Point Road Improvements; Availability and Public Comment Period

In accordance with the National Environmental Policy Act (Pub. L. 91-190), the National Park Service, U.S. Department of the Interior, announces that an Environmental Assessment for Race Point Road Improvement, Provincetown, Massachusetts is available for public review and comment.

Interested persons may review the document and make written comments

to the Superintendent, Cape Cod National Seashore, Headquarters Building, Marconi Station, South Wellfleet, Massachusetts 02663, during the public review period from February 14, 1992 through March 15, 1992. A public meeting to discuss the assessment alternatives will be held on Thursday, March 5, 1992 in Provincetown, Massachusetts (time and site location to be announced in local media).

Limited copies of the document are available to the public upon request by writing to the above address or calling Jim Killian at (508) 349-3785. Full size drawings of Alternatives 3 and 4 are also available at the Park Headquarters.

Dated February 5, 1992.

**Steven H. Lewis,**

*Acting Regional Director.*

[FR Doc. 92-3321 Filed 2-11-92; 8:45 am]

BILLING CODE 4310-70-M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Public Information Collection Requirements Submitted to OMB for Review

The Agency of International Development (A.I.D) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, FA/AS/ISS, room 1209B, SA-14, Washington, DC 20523-1413.

*Date Submitted:* January 31, 1992.

*Submitting Agency:* Agency for International Development.

*OMB Number:* None Assigned.

*Form Number:* None Assigned.

*Type of Submission:* New Collection.

*Title:* The Microenterprise Monitoring System Project (MEMS).

*Purpose:* The Agency for International Development (A.I.D.) provides funds to various organizations worldwide to carry out activities in support of microentrepreneurs. These activities rang from the provision of technical assitance to the creation of credit programs for the very poor. As a part of legislation A.I.D. has been directed to report annually to the Congress on its microenterprise program. It has also been instructed to implement a monitoring system which will enable the Agency to provide very detailed data on the outputs and beneficiaries of the microenterprise programs.

*Annual Reporting Burden*

Respondents: 485; annual responses: 1; average hours per response: 21.1; burden hours: 10,290.

*Reviewer:* Lin Liu (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 3, 1992.

**Elizabeth Baltimore,**

*Information Support Services Division.*

[FR Doc. 92-3233 Filed 2-11-92; 8:45 am]

BILLING CODE 6116-01-M

### Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) Tuesday, February 25, 1992 and Wednesday, February 26, 1992.

Date: February 25, 1992, (9 a.m. to 5 p.m.); February 26, 1992, (9 a.m. to 1 p.m.).

Place: State Department.

The purpose of the meeting will be to focus on the dramatic changes occurring in the former Soviet Union and the evolving A.I.D./PVO role that these changes suggest. The two-day meeting will revolve around discussions of two broad issues: the operational challenges which PVOs face in the region; and, the move from emergency humanitarian relief efforts to long range technical assistance development programs.

The meeting is free and open to the public. However, notification by February 20, 1992, through the Advisory Committee Headquarters is required.

Persons wishing to attend the meeting must call Theresa Graham or Susan Saragi (703) 351-0203, or facsimile (703) 351-0212. Persons attending must include their name, organization, birth date and social security number for security purposes.

Dated: January 30, 1992.

**Sally H. Montgomery,**

*Deputy Assistant Administrator, Private and Voluntary Cooperation, Food and Humanitarian Assistance.*

[FR Doc. 92-3234 Filed 2-11-92; 8:45 am]

BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-317]

### Economy-Wide Modeling of the Economic Implications of a FTA With Mexico and a NAFTA With Canada and Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Date of public hearing.

**SUMMARY:** The public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on March 26, 1992. All persons with an interest in the investigation have the right to appear in person or by counsel, to present information, and to be heard. Persons wishing to appear at the hearing should file prehearing briefs or statements (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC, not later than the close of business on March 12, 1992. Any posthearing briefs or statements must be filed by April 9, 1992.

The hearing is being held as a followup to a symposium on the technical merits and major findings of economy-wide modeling of the economic implications of a FTA with Mexico and a NAFTA with Mexico and Canada. The symposium is scheduled for February 24-25, also at the Commission in Washington. The purpose of the hearing is to allow the public and discussants additional opportunity to provide technical comments on the papers that were to have been discussed at the symposium. These papers will be contained in a preliminary report to be issued by the Commission on February 10, 1992. The preliminary report can be obtained by contacting William Bishop (202-205-1806), Office of the Secretary, U.S. International Trade Commission.

As stated in the Commission's notice of investigation, which was published in the **Federal Register** of November 29, 1991 (56 FR 61048), the investigation is being conducted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) pursuant to a request received on July 24, 1991, from the U.S. Trade Representative. In that notice the Commission issued a call for papers. The Commission has now selected the papers to be presented and, as indicated above, these papers will be made available in a preliminary report to be issued by the Commission prior to the symposium.

**EFFECTIVE DATE:** February 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** Edward Carroll (202–205–1819), Office of Public Affairs, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202–205–1810).

Issued: February 7, 1992.

By Order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92–3360 Filed 2–11–92; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 337–TA–331]

## Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same; Commission Determination Not To Review an Initial Determination Granting in Part Complainant's Motion for Summary Determination on the Issue of Domestic Industry

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) granting in part complainant's motion for summary determination on the existence of a domestic industry in the above-captioned investigation.

**ADDRESSES:** Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

**FOR FURTHER INFORMATION CONTACT:** Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

**SUPPLEMENTARY INFORMATION:** On November 19, 1991, complainant Chips and Technologies, Inc. filed a motion for summary determination on the issue of the existence of a domestic industry. The motion was opposed by respondents Sun Electronics Corporation, OPTi Computer, Inc., ETEQ Microsystems, Inc., and Elite Microelectronics, Inc. The Commission investigative attorney filed a response in support of a partial summary determination. On January 9, 1992, the presiding ALJ issued an ID granting the motion in part. The ALJ determined that, assuming complainant is selling products that in fact practice each of the patent claims in issue, there is substantial exploitation of the patents in issue and an industry exists in the United States as to each patent claim. No petitions for review were received.

This action is taken under the authority of section 337 of the Tariff act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: February 5, 1992.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92–3358 Filed 2–11–92; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 337–TA–333]

## Certain Woodworking Accessories; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, James M. Gould, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of James M. Gould, Esq. and Gabrielle Siman, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: February 3, 1992.

Respectfully submitted,

Lynn I. Levine,

*Director, Office of Unfair Import Investigations, 500 E Street SW., Washington, DC 20436.*

[FR Doc. 92–3359 Filed 2–11–92; 8:45 am]

BILLING CODE 7020–02–M

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# DEPARTMENT OF JUSTICE

## Lodging of Consent Decrees Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 29, 1992 a proposed Consent Decree in *United States* v. *Gary Hodges d/b/a Blue Ridge Exhaust* (W.D. Va.), Civil Action No. 89–0936(R), was lodged with the United States District Court for the Western District of Virginia. The proposed Consent Decree (the "Decree") concerns violations of section 203(a)(3) of the Clean Air Act, 42 U.S.C. 7522(a)(3), with respect to Defendant's provision of nonfunctioning, empty catalytic converter shells to an automotive repair facility which installed the shells on automobiles in place of functioning catalytic converters that are designed to control automobile emissions. The Decree requires Defendant to comply with section 203(a)(3) of the Clean Air Act, to refrain from supplying automotive shops with empty catalytic converter shells, and to pay a $10,000.00 civil penalty.

The Department of Justice will receive comments relating to the proposed Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gary Hodges d/b/a Blue Ridge Exhaust*, D.J. No. 90–5–2–1–1421.

The proposed Decree may be examined at the office of the United States Attorney for the Western District of Virginia, Poff Federal Building, room 456, 210 Franklin Road, SW., Roanoke, Virginia 24011. The proposed Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check payable to Consent Decree Library in the amount of $2.00 (25 cents per page reproduction costs).

John C. Cruden,

*Chief, Environmental Enforcement Section.*

### Consent Decree

*Whereas,* Plaintiff, 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 against Defendant Gary Hodges doing business as Blue Ridge Exhaust (Gary Hodges and Blue Ridge Exhaust are collectively referred to hereinafter as "Hodges"), a used automotive parts salvage dealer located at Route 2, Galax, Virginia, seeking civil penalties for alleged violations of section 203(a)(3)(B) of the Clean Air Act (the "Act"), 42 U.S.C. 7522(a)(3)(B), which prohibits tampering and causing tampering with automobile emissions control devices; and

*Whereas,* Hodges was served with the United States' Complaint and, on July

24, 1990, the Clerk entered Hodges' default pursuant to Fed. R. Civ. P. 55(a); and

*Whereas*, The United States and Hodges stipulate and agree to the making and entry of this Consent Decree ("Decree") without any admission of liability as to any matter arising out of the pleadings; and

*Whereas*, The parties recognize and the Court, by entering this Decree, finds that settlement of this matter without costly and protracted litigation between the parties is in the public interest;

*Now, Therefore*, It is hereby Ordered, Adjudged and Decreed:

**I. Jurisdiction and Venue**

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. 1345 and 1355. Venue of this action lies with this Court pursuant to 28 U.S.C. 1391(b) and 1395(a). The Complaint states a claim for which relief might be granted under sections 203(a)(3)(B) and 205 of the Act, 42 U.S.C. 7522(a)(3)(B) and 7524.

**II. Parties Bound**

2. The provisions of this Decree shall apply to and be binding upon Hodges, his employees, agents and assigns.

**III. Future Compliance With the Act**

3. Hodges shall comply with section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3). Hodges shall not sell, trade, or otherwise supply catalytic converter shells (*i.e.*, catalytic converters from which catalytic material has been removed) to any person or entity engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles.

**IV. Civil Penalties**

4. In full settlement of all civil claims in the Complaint filed herein, Hodges shall pay a civil penalty of $10,000 to the United States, payable in six installments, the first of which shall be in the amount of one thousand dollars ($1,000), and each of the next five of which shall be in the amount of one thousand eight hundred dollars ($1,800). The first installment shall be paid within thirty days after entry of this Decree. The second installment shall be paid on or before one year after the entry of this Decree. Each subsequent installment shall thereafter be paid annually, on or before the second, third, fourth, and fifth anniversary dates of the entry of this Decree, respectively.

5. If Hodges shall fail to comply with section 203(a)(3)(B) of the Act, 42 U.S.C. 7522(a)(3)(B) or with any provision of Paragraph 3 above while this Decree is in effect, Hodges shall pay to the United States a stipulated civil penalty in the amount of $2,500 for each violation.

6. Payments shall be made by certified or cashier's check payable to the "Treasurer of the United States" and shall reference Department of Justice case number 90-5-2-1-1421. Payments shall be remitted to the United States Attorney for the Western District of Virginia, P.O. Box 1709, Roanoke, VA 24008, Attention: Jean Barrett, Assistant United States Attorney, with a copy of the checks sent to:

(1) Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 Att'n: DOJ No. 90-5-2-1-1421

and

(2) Marilyn Bennett, Esq., Field Operations and Support Division, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

7. Payments made under this Decree shall not be treated by Hodges as tax-deductible for federal tax purposes.

8. If the civil penalty is not timely paid, this Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with rule 69 of the Federal Rules of Civil Procedure and other applicable federal authority. The United States shall be entitled to interest on any overdue amount until collected, at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3717. Furthermore, Hodges shall be liable for attorney's fees and costs incurred by the United States to collect any amounts due under this Decree.

**V. Attorney's Fees and Costs**

9. Each party shall bear its own attorney's fees and costs incurred in this action.

**VI. Lodging and Public Comment**

10. The parties agree and acknowledge that final approval and entry of this Decree are subject to the provisions of 28 CFR 50.7, which provides, *inter alia*, that notice of the proposed Decree be given to the public, with a thirty day period within which to comment on its terms.

**VII. Duration of the Decree**

11. This Decree shall take effect upon entry by the Court and, unless extended by the Court, shall terminate five years from the date of its entry. Nothing contained herein shall limit the power of the Court to issue such orders or directions as may be necessary to implement, enforce, or modify the terms of this Decree or to provide such further relief as the interests of justice may require.

SO ORDERED THIS _____ DAY OF _____, 1991.

BY THE COURT

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James C. Turk
United States District Judge

The undersigned representatives of each party enter into this Decree and agree that it may be entered subject to the requirements of 28 CFR 50.7.

For Defendant Hodges:

Dated: October 18, 1991.

Gary Hodges

Dated: October 18, 1991.

Raleigh M. Cooley,

*Cooley & Compton, Attorneys at Law, P.O. Box 517, Hillsville, Virginia 24343.*

For Plaintiff the United States of America:

Barry M. Hartman,

*Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.*

Dated: January 26, 1992.

John C. Cruden,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

Dated: January 22, 1992.

David Rosskam,

*Trial Attorney, Environmental Enforcement Section Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, (202) 514-3974/(FTS) 368-3974.*

E. Montgomery Tucker

*United States Attorney.*

Dated: January 28, 1992.
By:

Jean M. Barrett,

*Assistant United States Attorney, Western District of Virginia, P.O. Box 1709, Roanoke, VA 24011, (703) 982-6250.*

Dated: January 11, 1992.

Herbert Tate,

*Assistant Administrator, Office of Enforcement, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.*

Dated: November 18, 1991.

Marilyn Bennett,

*Field Operations and Support Division, Office of Air and Radiation, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.*

[FR Doc. 92-3241 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree in United States v. Kerr-McGee Chemical Corp., Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980**

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Kerr-McGee Chemical Corp.*, Civil Action No. 91-C-1396, was lodged with the United States District Court for the Eastern District of Wisconsin, on December 30, 1991. This action was brought pursuant to CERCLA sections 106 and 107(a), 42 U.S.C. 9606 and 9607(a), to achieve a cleanup of the Moss-American Site in Milwaukee, Wisconsin, and to recover costs expended by the United States at the Site. The Site is listed on the National Priorities List set forth at 40 CFR part 300, appendix B.

The Site comprises 88 acres in northwestern Milwaukee at the southeast corner of the intersection of Granville Rd. and Brown Deer Rd. The Little Menomonee River enters the Site through the northern boundary and leaves through the eastern boundary. A wood preserving plant was established on the Site in 1921. Kerr-McGee Chemical Corp. owned and operated the plant from approximately 1963 to 1976, and is a present owner of the Site. A number of water quality and soil/sediment contamination studies have been conducted at the Site. Based on the results of these studies, the U.S. Environmental Protection Agency ("U.S. EPA") has determined that materials used at the plant site containing creosote and its polynuclear aromatic hydrocarbon (PAH) derivatives are present in the soils, underground soils, sediments, groundwater, and surface water at the Site.

Under the proposed Consent Decree, a defendant Kerr-McGee Chemical Corp. will finance and perform a remedy previously selected by U.S. EPA for the Site. The main components of the remedy that will be implemented include the following actions. (1) The Little Menomonee River will be rechanneled to a new channel roughly parallel to the existing channel; (2) approximately 5,200 cubic yards of highly contaminated sediment from the old river channel and 80,000 cubic yards of on-site soil will be excavated and treated by soil-washing and an on-site slurry bio-reactor to health based risk levels established in EPA's Record of Decision (appendix 2 to the proposed Decree); (3) the treatment residue and low level remaining contamination will be covered on-site; (4) the old river channel will be covered with soil from the new channel; and (5) extracted groundwater will be treated using an oil/water separator and activated carbon. The selected remedy provides for continued monitoring of the groundwater for at least 5-10 years after the remedial action is complete.

Under the proposed Decree, Kerr McGee also would reimburse $1 million of the costs incurred by the United States at the Site.

The Department of Justice will receive comments on the proposed Consent Decree for a period of 30 days from the publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Kerr-McGee Chemical Corporation*, D.J. Ref. No. 90-11-2-590.

The proposed Consent Decree may be examined at the Office of the United States Attorney (Civil Division) for the Eastern District of Wisconsin, 330 U.S. Courthouse, 517 East Wisconsin Ave., Milwaukee, WI 53202-4580, (room 16G28); the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois; and at the U.S. Department of Justice, Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 (202-347-7829). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. In requesting a copy, please specify the documents required, together with a check payable to the "Consent Decree Library" for the appropriate amount, as follows:

Consent Decree only ($.25 per page reproduction costs): $19.50.
Consent Decree with appendices: $70.00.

**John C. Cruden,**
*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-3298 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-01-M

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## Antitrust Division

**United States v. Massachusetts Allergy Society, Inc.; Wilfred N. Beaucher; Jack E. Farnham; Bernard A. Berman; and Irving W. Bailit**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Massachusetts, in *United States of America* v. *Massachusetts Allergy Society, Inc., et. al.*, Civil No. 92-10273H.

The Complaint in this case alleges that defendants unreasonably restrained trade in violation of section 1 of the Sherman Act, 15 U.S.C. 1, by conspiring to fix and raise the fees paid for allergy services by certain health maintenance organizations ("HMOs") in Massachusetts. The Complaint alleges that defendants and their co-conspirators combined and conspired to, among other things, agree to have the Massachusetts Allergy Society, Inc. ("MAS") act as their joint negotiating agent to obtain higher fees from certain HMOs for allergy services and to resist competitive pressures to discount fees, and also to develop and adopt a fee schedule to be used by MAS in negotiating higher fees on their behalf from certain HMOs.

The proposed Final Judgment prohibits MAS from entering into, negotiating, or attempting to enter into any agreement or understanding concerning any fee regarding any allergy or allergy-related service, either on its own behalf or as a representative of any physician, with any third-party payer; and also enjoins MAS from advocating or recommending that any physician withdraw from or refuse to enter into an agreement with any third-party payer. The proposed Final Judgment also provides that the Court may impose a civil fine upon MAS for violating these prohibitions without any showing of willfulness or intent and requires MAS to institute a stringent antitrust compliance program.

The consenting individual physician defendants are similarly enjoined from discussing with or submitting to any third-party payer any fee regarding any allergy or allergy-related service on behalf of MAS or, except in very limited circumstances, as an agent for any other physician, and must submit annual written certifications regarding compliance with the Final Judgment.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to

Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903. Judiciary Center Building, Washington. DC 20001 (202/307-0467).

John W. Clark,

*Acting Director of Operations. Antitrust Division.*

[Civil Action No. 92-10273H]
Filed: February 3, 1992.

**Judge Harrington**

**Stipulation**

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party of other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court;

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 3, 1992.

For the Plaintiff:

James F. Rill,

*Assistant Attorney General.*

Joseph H. Widmar,

Robert E. Bloch,

Gail Kursh,

*Attorneys, U.S. Department of Justice. Antitrust Division.*

Edward D. Eliasberg, Jr.,

Seymour H. Dussman,

James F. Shalleck,

Karen L. Gable,

*Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, Room 9911, 555 Fourth Street, N.W., Washington, DC 20001. 202/307-0808.*

For the Defendants:

Daniel Goldberg,

*Counsel for the Massachusetts Allergy Society, Inc.*

Elliot D. Lobel,

*Counsel for Jack E. Farnham.*

Robert M. Buchanan,

*Counsel for Irving W. Bailit.*

Phillip A. Proger,

*Counsel for Wilfred N. Beaucher*

Dated: February 5, 1992.

Mitchell Rogovin,

*Counsel for Bernard A. Berman*

**Final Judgment**

Plaintiff, United States of America, having filed its Compliant on February 3, 1992, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue:

*Now, Therefore,* Before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is hereby

*Ordered, Adjudged and Decreed* as follows:

**I.**

**Jurisdiction**

This Court has jurisdiction over the subject matter of and parties to this action. The Compliant states a claim upon which relief may be granted against each defendant under section 1 of the Sherman Act, 15 U.S.C 1.

**II.**

**Definitions**

As used in this Final Judgment:

(A) *Fee* means any proposed, suggested, recommended, or actual charge, capitation rate, reimbursement rate, relative value conversion factor, relative value unit, or price term or condition for any allergy or allergy related service or any methodology for determining or computing any of the foregoing;

(B) *Fee schedule* means any list of physician services showing a fee, range of fees, or methodology for determining or computing fees for such services;

(C) *Individual defendant* means each defendant other than MAS;

(D) *Integrated joint venture* means a joint arrangement to provide prepaid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services;

(E) *MAS* means Massachusetts Allergy Society, Inc.;

(F) *Peer review* means an examination of a physician's charges in a particular case and an assessment of whether those charges were excessive;

(G) *Physician* means a doctor of medicine or osteopathy;

(H) *Relative value scale* means any list or compilation of medical services or procedures that sets comparative values for such procedures or services whether or not those values are expressed in or convertible to monetary terms; and

(I) *Third party payer* means any person or entity that reimburses for, purchases, or pays for health care services provided to any other person and includes, but is not limited to, health maintenance organizations, preferred provider organizations, health insurance companies, prepaid hospital, medical, or other health service plans such as Blue Shield and Blue Cross plans, government health benefits programs, administrators of self-insured health benefits programs, and employers or other entities providing self-insured health benefit programs.

**III.**

**Applicability**

This Final Judgment shall apply to defendant MAS and to each of its officers, committee members, agents, employees, successors, and assigns, to each individual defendant until the retirement of his license to practice medicine or the assumption of inactive status as provided in 243 CMR 2.06(3) and 243 CMR 2.07(7) and during any subsequent period of reinstatement of his license or resumption of active practice, and to each of their agents and employees, and to all other persons acting in concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

**IV.**

**MAS Prohibited Conduct**

Defendant MAS is enjoined from:

(A) Entering into, negotiating, or attempting to enter into any agreement or understanding concerning any fee, either on its own behalf or as a representative of any physician, with any third party payer;

(B) Providing recommendations to any physician on the desirability or appropriateness of any fee paid or to be paid by any third party payer, except that (1) nothing in this Section IV(B) shall prohibit MAS from engaging in the conduct permitted by Section IV(C), and (2) nothing in this Final Judgment shall

prohibit MAS when requested by a third party payer or patient from participating in peer review of fees charged by individual physicians in individual cases;

(C) Developing, adopting or distributing any fee schedule or relative value scale for any use with any third party payer, including use in negotiating or attempting to enter an agreement or understanding with a third party payer, except that (1) nothing in this Final Judgment shall prohibit MAS from suggesting or providing a fee schedule or relative value scale to a third party payer solely for informational purposes when (a) the third party payer initiates in writing a specific request to MAS for that information, and (b) MAS, at the time of transmitting the fee schedule or relative value scale to the third party payer, expressly states in writing that the payer is not required to accept or adopt the fee schedule or relative value scale; and (2) nothing in this Final Judgment shall prohibit MAS from considering or developing any other type of fee information for use by a third party payer, or from actually suggesting or providing such fee information to a third party payer provided MAS, at the time of the transmission, expressly states that the payer is not required to accept or adopt the information.

(D) Advocating or recommending that any physician withdraw from or refuse to enter into, or threaten to withdraw from or refuse to enter into, any actual or proposed agreement with any third party payer; and

(E) Communicating to any third party payer that any physician will or may withdraw from or refuse to enter into any actual or proposed agreement with any third party payer if any term or condition is not acceptable to MAS or to any physician.

V.

**Phohibited Conduct of Individual Defendants**

Except as provided in section VI below, each individual defendant is enjoined from:

(A) Discussing any fee with or submitting any fee to any third party payer on behalf of MAS or as an agent for any other physician;

(B) Agreeing or attempting to agree with defendant MAS or any other physician on any fee; and

(C) Agreeing or attempting to agree with defendant MAS or any other physician to withdraw from or refuse to enter into, or threaten to withdraw from or refuse to enter into, any actual or proposed agreement with any third party payer.

VI.

**Bona Fide Group Practices and Integrated Joint Ventures**

Nothing in this Final Judgment shall prohibit an individual defendant from continuing to be or becoming a member or employee of a partnership, professional corporation, or other bona fide group practice or, on behalf of any such entity, from negotiating any fee or withdrawing from or refusing to enter into or stating an intention to withdraw from or refuse to enter into any actual or proposed agreement with any third party payer. Nor shall anything in this Final Judgment prohibit an individual defendant from continuing to be or becoming a member of an integrated joint venture before or after the entry of this Final Judgment so long as the integrated joint venture in no way discourages or prohibits any participating physician from negotiating or contracting independently with any third party payer. Each individual defendant shall promptly inform plaintiff of the name and address of any integrated joint venture he joins after the entry of this Final Judgment.

VII.

**First Amendment Rights**

Nothing in this Final Judgment shall prohibit any defendant acting either alone or with others from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency, legislative body or other governmental agency concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

VIII.

**Bar From Office**

Each individual defendant is further enjoined from holding any office in defendant MAS for the next five years or serving on any committee of defendant MAS that provides any information on fees to third party payers.

IX.

**MAS Compliance Program**

Defendant MAS is ordered to maintain an antitrust compliance program which shall include at a minimum:

(A) Establishing, adopting, and maintaining a written statement setting forth the policy of MAS regarding compliance with the antitrust laws and this Final Judgment;

(B) Distributing by certified mail, return receipt requested, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment along with the Complaint and Competitive Impact Statement in this matter and the policy statement required by section IX(A) to each member of MAS;

(C) Providing a copy of this Final Judgment along with the Complaint and Competitive Impact Statement in this matter and the policy statement required by section IX(A) to each person joining MAS within 60 days of that person joining MAS;

(D) Holding a briefing annually at a general membership meeting on the meaning and requirements of this Final Judgment and the antitrust laws;

(E) Obtaining from each officer and Executive Committee member an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and imprisonment and/or fine and (3) is not aware of any violation of this Final Judgment;

(F) Maintaining for inspection by plaintiff a record of recipients to whom the Final Judgment has been distributed and from whom the certification required by Section IX(E) has been obtained; and

(G) Conducting an audit of its activities within 60 days from the entry of this Final Judgment and periodically thereafter while this Final Judgment remains in effect, to determine compliance with this Final Judgment.

X.

**Required Action by Individual Defendants**

Each individual defendant shall distribute a copy of this Final Judgment to each physician in, and the business and office managers of, their respective practices within 10 days of the entry of this Final Judgment. Each individual defendant shall distribute a copy of this Final Judgment to any physician who joins their respective practices or to any person who becomes the business or office manager of their respective practices within 10 days of that person joining or becoming employed by that practice.

XI.

**Certifications**

(A) Within 75 days after entry of this Final Judgment, defendant MAS shall certify to plaintiff that it has established

and adopted a written antitrust compliance policy and provide a copy thereof to plaintiff; and that it has made the distribution of this Final Judgment, the Complaint and the Competitive Impact Statement in this matter and the policy statement as required by Sections IX(A)–(B) above;

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant MAS shall certify annually to plaintiff whether defendant MAS has complied with the provisions of sections IX(C)–(G) above; and

(C) For 10 years after the entry of this Final Judgment, on or before its anniversary date, each individual defendant shall certify annually using the form attached to this Final Judgment as Appendix A that defendant has read the Final Judgment and understands it and has complied with section X of this Final Judgment.

XII.

**Sanctions**

If, after the entry of this Final Judgment, defendant MAS violates section IV of this Final Judgment, the Court may, after notice and hearing, but without any showing of willfulness or intent, impose a civil fine upon defendant MAS in an amount reasonable in light of all surrounding circumstances. A fine may be levied upon defendant MAS for each separate violation of section IV.

XIII.

**Preservation of Remedies**

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or person any other relief available under any other applicable provision of law for violation of this Final Judgment, in addition to or in lieu of the civil penalties provided for in section XII above.

XIV.

**Plaintiff's Access**

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice to the relevant defendant be permitted:

(1) Access during office hours of such defendant to inspect and copy all records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant, and subject to any legally recognized privilege, such defendant shall submit such written reports, under oath if requested, to plaintiff relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section XIV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by an individual defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given any plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XV

**Jurisdiction Retained**

Jurisdiction is retained by this Court to enable any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement or modification of any of its provisions, and for the punishment of any violation hereof.

XVI

**Notifications**

Defendant MAS shall notify plaintiff at least 30 days before any proposed change in its legal structure such as dissolution, reorganization, or merger resulting in the creation of a successor corporation or association, or any other change which may affect compliance with this Final Judgment. Each individual defendant shall notify, in writing, plaintiff not later than 15 days after the retirement of his license to practice medicine or his assumption of inactive status, and shall provide plaintiff with evidence of such retirement or assumption of inactive status. In the event that the retiring or inactive individual defendant subsequently seeks reinstatement of his license or resumes active status, he shall notify plaintiff, in writing, not later than 15 days after such reinstatement or resumption of active status.

XVII.

**Expiration of Final Judgment**

This Final Judgment shall expire ten (10) years from the date of entry.

XVIII.

**Public Interest Determination**

Entry of this Final Judgment is in the public interest.

Dated:

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United States District Judge

**Appendix A**

**Annual Certification**

As required by section XI(C) of the Final Judgment in this matter, I certify that I have read the Final Judgment in this case and understand it. I also certify that I have given a copy of the Final Judgment in this case to each physician, office manager, or business manager who has joined or become employed by my practice during the past year within 10 days of the person joining or becoming employed by the practice.

I understand that under 18 U.S.C. 1001 the making of a false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States is a felony punishable by a fine or not more than $10,000 or imprisonment of not more than five years or both.

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(Name of Person Submitting Certification)

**Competitive Impact Statement**

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

**Nature and Purpose of the Proceeding**

On February 3, 1992, the United States filed a civil antitrust Complaint alleging that the defendants named above and their co-conspirators conspired unreasonably to fix and raise the fees paid for allergy services by certain health maintenance organizations ("HMOs") in Massachusetts in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleges that, beginning at least as early as October 1984 and continuing at least until the date of the Complaint, defendants and their co-conspirators violated section 1 of the Sherman Act, 15 U.S.C. 1, by agreeing to have defendant Massachusetts Allergy Society, Inc. ("MAS") act as their joint negotiating agent to obtain higher fees from certain HMOs for allergy services and to resist competitive pressures to discount fees, and to develop and adopt a fee schedule to be used by defendant MAS in negotiating higher fees on their behalf from certain HMOs. According to the Complaint, the effects of the conspiracy have been to unreasonably restrain price competition among defendants for the sale of their services to certain HMOs in Massachusetts, to artificially increase fees for allergy services provided to members of certain HMOs in Massachusetts, and to deprive certain HMOs in Massachusetts of the benefit of free and open competition in the sale of allergy services.

The relief sought in the Complaint is to enjoin defendants for a period of 10 years from continuing or renewing the conspiracy or from engaging in any other conspiracy or arrangement having a similar purpose or effect. The Complaint also seeks to require MAS to institute a compliance program to ensure that MAS does not enter into or participate in any plan, program or other arrangement having the purpose or effect of continuing or renewing the conspiracy.

Entry of the proposed Final Judgment will terminate the action with respect to the consenting defendants, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment, or to punish violations of any of its provisions.

II

**Description of the Practices Involved in the Alleged Violation**

At trial, the Government would have contended the following:

1. An HMO is an entity that, for a set premium, provides comprehensive health care services to its members through designated providers who contract with the HMO.

2. In 1988, approximately 20 HMOs provided health care services to approximately 1.3 million people in Massachusetts.

3. HMOs in Massachusetts often provide allergy services to their members by contracting with independent, private practice physicians who specialize in the treatment of allergies ("allergists"). HMOs typically pay these allergists according to fee schedules set by the HMO. These fee schedules frequently represent a discount from the physicians' usual charges.

4. MAS was founded in 1977 and is a not-for-profit membership corporation organized and existing under the laws of the Commonwealth of Massachusetts. MAS is a professional association of about 53 allergists. Most of the allergists practicing in Massachusetts are members of MAS and compete with each other for both private-pay patients and the opportunity to provide service to HMO members.

5. Wilfred N. Beaucher, M.D. ("Beaucher") is an allergist licensed to practice medicine in Massachusetts and is in private practice. Beaucher since October 1984 has been the official MAS representative to negotiate fees with HMOs and served as Chairman of the MAS HMO Liaison Committee from its inception in September 1986.

6. Jack E. Farnham, M.D. ("Farnham") is an allergist licensed to practice medicine in Massachusetts and is in private practice. Farnham was Secretary-Treasurer of MAS from June 1984 to June 1986 and President of MAS from June 1986 to June 1988. Farnham served as an ex-officio member of the MAS HMO Liaison Committee from September 1986 until at least June 1988.

7. Bernard A. Berman, M.D. ("Berman") is an allergist licensed to practice medicine in Massachusetts and is in private practice. Berman is a founder of MAS and served as a member of the MAS HMO Liaison Committee from its inception in September 1986.

8. Irving W. Bailit, M.D. ("Bailit") is an allergist and is licensed to practice medicine in Massachusetts. Bailit is a former president of MAS and served as a member of the MAS HMO Liaison Committee from its inception in September 1986.

9. Defendants Beaucher, Farnham, Berman, and Bailit each provide allergy services to members of one or more HMOs in Massachusetts.

10. Beginning at least as early as October 1984, defendants and some other MAS members agreed to use MAS as a joint negotiating agent to obtain higher fees from certain HMOs for allergy services and resist competitive pressures to discount fees.

11. On or about October 2, 1984, Beaucher was appointed as the official representative of MAS to negotiate higher fees from HMOs for allergy services on behalf of the individual defendants and other MAS members, and on subsequent dates Beaucher's appointment was reconfirmed.

12. On or about September 16, 1986, the MAS HMO Liaison Committee was created and Berman, Bailit and another allergist were appointed to that Committee to assist Beaucher in negotiating higher fees from certain HMOs for allergy services.

13. On or before December 3, 1986, defendants and some other MAS members agreed to develop and use a fee schedule in negotiating higher fees from certain HMOs for allergy services and agreed that MAS members would take a uniform position on the prices to be sought from these HMOs.

14. On or about December 31, 1986, MAS submitted a fee schedule to an HMO on behalf of MAS for the purpose of negotiating higher fees for allergy services from that HMO for the individual defendants and other MAS members.

15. On or about May 29, 1987, Beaucher submitted a revised fee schedule to the same HMO on behalf of MAS and pressured the HMO to raise its allergy fees to the level specified in the schedule.

16. On or before August 6, 1987, MAS agreed with that HMO on the fee to be paid by the HMO for allergy services.

17. On or about August 19, 1987, Berman submitted a fee schedule, on behalf of MAS, to another HMO for the purpose of negotiating higher fees for allergy services from that HMO.

III

**Explanation of the Proposed Final Judgment**

The United States and four of the five defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of section 2(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section XVIII of

the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that defendant MAS does not act for and is not used by allergists as a joint negotiating agent on fees with any HMO.

*A. Prohibitions and Obligations*

Under section IV(A) of the proposed Final Judgment, MAS is enjoined from entering into, negotiating, or attempting to enter into any agreement or understanding concerning any fee, either on its own behalf or as a representative of any physician, with any third party payer. "Fee" is defined in section II of the Final Judgment as "any proposed, suggested, recommended, or actual charge, capitation rate, reimbursement rate, relative value conversion factor, relative value unit, or price term or condition for any allergy or allergy-related service or any methodology for determining or computing any of the foregoing." "Third party payer" is defined in section II of the Final Judgment as "any person or entity that reimburses for, purchases, or pays for health care services provided to any other person and includes, but is not limited to, health maintenance organizations, preferred provider organizations, health insurance companies, prepaid hospital, medical, or other health service plans such as Blue Shield and Blue Cross plans, government health benefits programs, administrators of self-insured health benefits programs, and employers or other entities providing self-insured health benefit programs."

Section IV(B) enjoins MAS from providing recommendations to any physician on the desirability or appropriateness of any fee paid or to be paid by any third party payer. Section IV(B) states, however, that (1) nothing in section IV(B) prohibits MAS from engaging in the conduct permitted by section IV(C), and (2) nothing in the Final Judgment prohibits MAS when requested by a third party or patient from participating in peer review of fees charged by individual physicians in individual cases. "Peer review" is defined in section II of the Final Judgment as "an examination of a physician's charges in a particular case and an assessment of whether those charges were excessive.'

Section IV(C) enjoins MAS from developing, adopting or distributing any fee schedule or relative value scale for any use with any third party payer, including use in negotiating or attempting to enter into an agreement or understanding with a third party payer, with one exception. Under the Final Judgment, MAS may suggest or provide a fee schedule or relative value scale to a third party payer solely for informational purposes if (a) the third party payer initiates in writing a specific request to MAS for that information, and (b) MAS, at the time of transmitting the fee schedule or relative value scale to the third party payer, expressly states in writing that the payer is not required to accept or adopt the fee schedule or relative value scale. "Fee schedule" is defined in section II of the Final Judgment as "any list of physician services showing a fee, range of fees, or methodology for determining or computing fees for such services." Relative value scale" is defined in section II of the Final Judgment as "any list or compilation of medical services or procedures that sets comparative values for such procedures or services whether or not those values are expressed in or convertible to monetary terms." Section IV(C) further states that nothing in the Final Judgment prohibits MAS from considering or developing any other type of fee information for use by a third party payer, or from actually suggesting or providing such fee information to a third party payer provided MAS, at the time of the transmission, expressly states that the payer is not required to accept or adopt the information.

Under section IV(D), MAS is enjoined from advocating or recommending that any physician withdraw from or refuse to enter into, or threaten to withdraw from or refuse to enter into, any actual or proposed agreement with any third party payer. MAS is also prohibited under section IV(E) from communicating to any third party payer that any physician will or may withdraw from or refuse to enter into any actual or proposed agreement with any third party payer if any term or condition is not acceptable to MAS or to any physician.

Under section V, each individual defendant is enjoined, except as provided in section VI, from (1) discussing any fee with or submitting any fee to any third party payer on behalf of MAS or as an agent for any other physician; (2) agreeing or attempting to agree with MAS or any other physician on any fee; and (3) agreeing or attempting to agree with MAS or any other physician to withdraw from or refuse to enter into, or threaten to withdraw from or refuse to enter into, any actual or proposed agreement with any third party payer.

Section VI provides that nothing in the Final Judgment prohibits an individual defendant from continuing to be or becoming a member or employee of a partnership, professional corporation, or other bona fide group practice, or, on behalf of any such entity, from negotiating any fee or withdrawing from or refusing to enter into or stating an intention to withdraw from or refuse to enter into any actual or proposed agreement with any third party payer. Section VI also provides that nothing in the Final Judgment prohibits an individual defendant from continuing to be or becoming a member of an integrated joint venture before or after the entry of the Final Judgment so long as the integrated joint venture in no way discourages or prohibits any participating physician from negotiating or contracting independently with any third party payer. "Integrated joint venture" is defined in section II of the Final Judgment as "a joint arrangement to provide prepaid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services." Under section VI, an individual defendant must promptly inform plaintiff of the name and address of any integrated joint venture he joins after the entry of this Final Judgment.

Section VII provides that nothing in the Final Judgment prohibits any defendant acting either alone or with others from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency, legislative body or other governmental agency concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

Section VIII provides that each individual defendant is enjoined from holding any office in MAS for the next five years or serving on any committee of MAS that provides any information on fees to third party payers.

Section IX requires MAS to maintain an antitrust compliance program. Section IX provides that this program at a minimum shall include (1) establishing, adopting, and maintaining a written statement setting forth the policy of MAS regarding compliance with the antitrust laws and this Final Judgment; (2) distributing by certified mail, return receipt requested, within 60 days from the entry of this Final Judgment, a copy of this policy statement and the Final Judgment, Complaint, and Competitive Impact Statement in this matter to each member of MAS; (3) providing a copy of the policy statement and the Final Judgment, Complaint, and Competitive

Impact Statement in this matter to each person joining MAS within 60 days of that person joining MAS; (4) holding a briefing annually at a general membership meeting on the meaning and requirements of the Final Judgment and the antitrust laws; (5) obtaining from each MAS officer and Executive Committee member an annual written certification that he or she (a) has read, understands, and agrees to abide by the terms of the Final Judgment, (b) has been advised and understands that noncompliance with the Final Judgment may result in his or her conviction for criminal contempt of court and imprisonment and/or fine, and (c) is not aware of any violation of the Final Judgment; (6) maintaining for inspection by plaintiff a record of recipients to whom the Final Judgment has been distributed and from whom the required certification has been obtained; and (7) conducting an audit of its activities within 60 days from the entry of the Final Judgment and periodically thereafter while the Final Judgment remains in effect, to determine compliance with the Final Judgment.

Section X requires each individual defendant to distribute a copy of the Final Judgment to each physician in, and the business and office managers of, their respective practices within 10 days of the entry of the Final Judgment. Section X also requires each individual defendant to distribute a copy of the Final Judgment to any physician who joins their respective practices or to any person who becomes the business or office manager of their respective practices within 10 days of that person joining or becoming employed by the practice.

Section XI requires various certifications of defendants. Section XI requires MAS to certify to plaintiff within 75 days after the entry of the Final Judgment that MAS has established and adopted a written antitrust compliance policy and provide a copy thereof to plaintiff; and that MAS has made the distribution of the policy statement and Final Judgment, Complaint, and Competitive Impact Statement in this matter as required by sections IX (A)–(B) of the Final Judgment. Under section XI, MAS must also certify annually to plaintiff whether MAS has complied with the provisions of sections IX (C)–(G). Section XI also requires each individual defendant to certify annually using the form attached to the Final Judgment that defendant has read the Final Judgment and understands it and has complied with section X of the Final Judgment.

Section XII of the proposed Final Judgment provides that the Court may, after notice and hearing, impose upon MAS a civil fine for violating section IV of the Final Judgment without there having to be any showing of willfulness or intent. Section XIII of the proposed Final Judgment provides that, in addition to or in lieu of the civil penalties provided for in section XII of the Final Judgment, the United States may seek and the Court may impose against any defendant or any person any other relief allowed by law for violation of the Final Judgment.

Section XVI requires defendants to provide various notifications to plaintiff. Under section XVI, MAS must notify plaintiff at least 30 days before any proposed change in its legal structure such as dissolution, reorganization, or merger resulting in the creation of a successor corporation or association, or any other change which may affect compliance with the Final Judgment. Section XVI also requires each individual defendant to notify, in writing, plaintiff not later than 15 days after the retirement of his license to practice medicine or his assumption of inactive status, and to provide plaintiff with evidence of such retirement or assumption of inactive status. In the event that the retiring or inactive individual defendant subsequently seeks reinstatement of his license or resumes active status, Section XVI requires him to notify plaintiff, in writing, not later than 15 days after such reinstatement or resumption of active status.

*B. Scope of the Proposed Final Judgment*

The Final Judgment applies to MAS and to each of its officers, committee members, agents, employees, successors, and assigns, to each individual defendant until the retirement of his license to practice medicine or the assumption of inactive status as provided in 243 CMR 2.06(3) and 243 CMR 2.07(7) and during any subsequent period of reinstatement of his license or resumption of active practice, and to each of their agents and employees, and to all other persons acting in concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

Section XVII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for 10 years.

*C. Effect of the Proposed Judgment on Competition*

The relief in the proposed Final Judgment is designed to ensure that MAS does not act for and is not used by allergists as a joint negotiating agent on fees with any HMO. The relief is also designed to ensure that the individual defendants do not negotiate fees on behalf of MAS or, except in very limited circumstances, as an agent for any other physician with any third party payer.

Three separate methods for determining compliance with the terms of the Final Judgment are provided. First, Section XI(A) requires MAS to certify to the Department of Justice within 75 days after the Final Judgment is entered that MAS has established and adopted a written antitrust compliance policy, provided a copy to plaintiff, and made the required distribution of the statement and Complaint and Competitive Impact Statement under Sections IX (A)–(B) of the Final Judgment. Section XI(B) requires MAS to certify annually to the Department of Justice that it has made the various distributions, held the briefings, obtained the certifications, maintained the records, and conducted the audits required by sections IX (C)–(G) of the Final Judgment. Section XI(C) requires each individual defendant to certify annually using the form attached to the Final Judgment that he has read the Final Judgment and understands it and has complied with Section X of the Final Judgment.

Second, section XIV(A) provides that, upon reasonable notice, the Department of Justice shall be given access to any records of a defendant and be permitted to interview any officers, employees, or agents of such defendant.

Finally, section XIV(B) provides that, upon written request, the Department of Justice may require a defendant to submit written reports, under oath if asked, about any matters relating to the Final Judgment as may be requested.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy.

**IV**

**Remedies Available to Potential Private Litigants**

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may

bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the judgment has no *prima facie* effect in any subsequent lawsuit that may be brought against defendants in this matter.

V

**Procedures Available for Modification of the Proposed Final Judgment**

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. Section XV of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

**Alternative to the Proposed Final Judgment**

The alternative to the proposed Final Judgment would be a full trial of the case with respect to the consenting defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

VII

**Determinative Materials and Documents**

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Dated: February 3, 1992.

Respectfully submitted,

Edward D. Eliasberg, Jr.,

Seymour H. Dussman,

James F. Shalleck,

Karen L. Gable,

*Attorneys, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001, Telephone: (202) 307-0808.*

**Certificate of Service**

I, Edward D. Eliasberg, Jr., hereby certify that a copy of the Competitive Impact Statement in United States v. Massachusetts Allergy Society, Inc., et al. was served on the 3rd day of February 1992, first class mail, to counsel as follows:

Daniel L. Goldberg, Esquire, Bingham, Dana & Gould, 150 Federal Street, Boston, Massachusetts 02110.

Philip A. Proger, Esquire, Jones, Day Reavis & Pogue, 1450 G Street, NW., Washington, DC 20005.

Elliot D. Lobel, Esquire, Peckham, Lobel, Casey, Prince & Tyne, 585 Commercial Street, Boston, Massachusetts 02109-2024.

Mitchell Rogovin, Esquire, Donovan Leisure, Rogovin, Huge & Schiller, 1250 Twenty-Fourth Street, NW., Washington, DC 20037-1124.

Robert M. Buchanan, Esquire, Sullivan & Worcester, One Post Office Square, Boston, Massachusetts 02109.

Edward D. Eliasberg, Jr.

[FR Doc. 92-3240 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-01-M

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## Drug Enforcement Administration

### Bill's Pharmacy; Denial of Application for Registration

On September 25, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Bill's Pharmacy, 130 Fountain Avenue, Pudacah, Kentucky 42001 (Respondent), proposing to deny its application, executed on September 12, 1990, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

On October 22, 1991, proceeding pro se, Respondent waived its opportunity for a hearing and submitted a written statement on the issues raised by the Order to Show Cause. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and written statement submitted by Respondent. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that Respondent's previous DEA Certificate of Registration was revoked by final order of the Acting Administrator of the Drug Enforcement Administration, such order becoming effective on September 4, 1990. The Administrator further finds that the final order revoking Respondent's registration, found at 55 Federal Register 31456 (August 2, 1990), was based upon substantial evidence in the record. The evidence in the record demonstrated that Respondent pharmacy was in a state of chaotic disarray and was filthy. Further evidence showed that Respondent prepared controlled substances in an apartment adjacent to the pharmacy to send to a nursing home. The apartment was filled with trash and animal droppings were found on various surfaces. Audits of Respondent's controlled substances inventory revealed significant shortages of various controlled substances, and Respondent's recordkeeping was seriously deficient. Among the conclusions reached in the Acting Administrator's decision was the conclusion that Respondent had not expressed any willingness to comply with the laws and regulations under which it is obligated to function.

The Administrator finds that the written statement tendered by the Respondent is, in essence, an attempt to appeal the Acting Administrator's earlier final order while remaining in the administrative forum. The written statement merely challenges the findings made in the earlier final order and presents no arguments which would justify the issuance of a new registration to the Respondent. The Respondent has offered no new information to indicate that its registration is suddenly consistent with the public interest, and no evidence of rehabilitation or efforts to become educated in the laws and regulations relating to DEA registrants. Therefore, the Administrator finds that Respondent's application for registration finds that Respondent's application for registration, executed on September 12, 1990, must be denied.

Having concluded that there are lawful bases for the denial of Respondent's application, and having concluded that its pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed by Bill's Pharmacy on September 12,

1990, be, and it hereby is, denied. This denial is effective February 12, 1992.

Dated: February 5, 1992.

**Robert C. Bonner,**

*Administrator of Drug Enforcement.*

[FR Doc. 92-3306 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-09-M

## Rifat Erenmemis, M.D.; Denial of Application for Registration

On September 9, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Rifat Erenmemis, M.D., 4601 State Street, East St. Louis, Illinois 62205 (Respondent), proposing to deny his application, executed on July 14, 1989, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

On October 7, 1991, proceeding pro se, Respondent waived his opportunity for a hearing and submitted a written statement on the issues raised by the Order to Show Cause. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and written statement submitted by Respondent. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that Respondent's DEA Certificate of Registration was surrendered in August 1988, following the summary suspension of his state registration by the State of Illinois on July 24, 1988. The Administrator further finds that, on July 5, 1988, Respondent pled guilty to a reduced charge of unlawful possession of controlled substances, receiving a two year probation which ended on July 5, 1990. The original charges against Respondent stemmed from several undercover buys of controlled substances, during which investigators received controlled substances for no legitimate medical purpose. Respondent was subsequently indicted on seven felony counts of violation of the Illinois Controlled Substances Act and ultimately pled guilty as stated earlier. The Administrator determines from a review of the information before him and from a review of the written submission of Respondent, that Respondent's actions do not merit the issuance of a DEA Certificate of Registration to him.

The Administrator finds that Respondent has clearly failed to recognize the significance of his wrongdoing. Indeed, Respondent continues to deny responsibility for any wrongdoing at all. Respondent's written statement indicates that he is unfamiliar with the laws and regulations relating to controlled substances, instead branding himself a victim of the judicial system. Due to Respondent's inability to accept responsibility for his actions, due to the criminal activity itself, and due to Respondent's obvious lack of knowledge of the laws and regulations by which he is bound as a DEA registrant, the Administrator finds that Respondent's application for registration must be denied.

Having concluded that there are lawful bases for the denial of Respondent's application, and having concluded that his pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed by Rifat Erenmemis, M.D., on July 14, 1989, be, and it hereby is, denied. This denial is effective February 12, 1992.

Dated: February 5, 1992.

**Robert C. Bonner,**

*Administrator of Drug Enforcement.*

[FR Doc. 92-3306 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-09-M

## Federal Bureau of Investigation

## Uniform Crime Reporting (UCR) Data Providers Advisory Policy Board (APB); Meeting

The UCR APB will meet on March 27 and 28, 1992, from 9 a.m. until close of business each day at the Opryland Hotel, 2800 Opryland Drive, Nashville, Tennessee.

Major topics to be considered: (1) To obtain an assessment of the revised "Analysis of Law Enforcement Officers Killed and Assaulted" form; (2) to discuss and describe the contents of a "Violence Against Police Officers" grant, the purpose of which is to study instances of serious assaults of on-duty law enforcement officers; (3) to evaluate and compare UCR policy as it relates to classifying infant deaths due to negligence or alleged negligence of the mother, for example, physical neglect, drug addiction, or previously diagnosed HIV infection; and (4) resolve questions of access to NIBRS' data.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairperson of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Information Management Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number (202) 324-2614.

**William S. Sessions,**

*Director.*

[FR Doc. 92-3242 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-02-M

## Office of the Attorney General

**[Order No. 1569-92]**

## Delay of Effective Date of Notice-Related Provisions of Section 242B of the Immigration and Nationality Act

**AGENCY:** Department of Justice.

**ACTION:** Notice.

**SUMMARY:** In a notice published August 13, 1991, the Department of Justice, 56 FR 38463, August 13, 1991, pursuant to section 242B(a)(4) of the Immigration and Nationality Act, as amended (the "Act") (8 U.S.C. 1252b), certified creation of the Central Address File System. The notice further stated that the notice-related provisions contained in subsections (a), (b), (c), and (e)(1) of section 242B of the Act, as amended, would take effect on "February 13, 1991." In a correction published August 22, 1991, 56 FR 41726, August 22, 1991, the effective date was corrected to "February 13, 1992." The purpose of this notice is to delay the effective date of the notice-related provisions until June 13, 1992.

Section 242B(a)(1), (2), and (3) requires service upon aliens in deportation proceedings of notice written in English and Spanish that sets forth, *inter alia*, the nature of the proceedings, the time and place, and the consequences of failing to appear. This notice will delay the effective date of these and other related provisions (section 242B(b), (c), and (e)(1)) in order to allow additional time to implement the notice requirement.

This notice affects only the notice-related provisions of section 242B and not the establishment of the Central Address File System as provided in section 242B(a)(4) of the Act.

**EFFECTIVE DATE:** This notice is effective February 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** William W. Kummings, Deputy Associate General Counsel, Office of the General Counsel, 425 I Street, NW, room 7048, Washington, DC 20536, telephone (202) 514-5001.

The notice-related provisions contained in subsections (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act, as amended, shall take effect on June 13, 1992.

Dated: February 7, 1992.

William P. Barr,

*Attorney General.*

[FR Doc. 92-3429 Filed 2-17-92; 8:45 am]

BILLING CODE 4410-10-M

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## Office of Justice Programs

## Office for Victims of Crime

## FY 1992 Discretionary Grant Application

**AGENCY:** Office of Justice Programs, Office for Victims of Crime.

**ACTION:** Public announcement of the availability of the Application Kit for Fiscal Year 1992 Discretionary Grants to be awarded by the Office for Victims of Crime.

**SUMMARY:** The Office for Victims of Crime (OVC) is publishing this Notice of FY 1992 Discretionary Grant Application Kit availability for all interested applicants.

**DATES:** All proposals responding to the announcement of the Application Kit must be received by the Office for Victims of Crime by the specific due dates indicated in the Application Kit for each program.

**ADDRESSES:** Office for Victims of Crime, room 1386, 633 Indiana Avenue, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Jo Morrow, Special Projects Division, Office for Victims of Crime, at the above address. Telephone: (202) 616-3572. To obtain Application Kits, call the National Victims Resource Center (NVRC) 1-800-627-6872 at the National Criminal Justice Reference Service (NCJRS), Box 6000, AHG, Rockville, MD 20850.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

Authority: This action is authorized under the following: § 303(b) of Title III ("Family Violence Prevention and Services Act") of the Child Abuse Prevention, Adoption, and Family Services Act of 1988 (Pub. L. 100-294), 42 U.S.C. 10401; and the Victims of Crime Act of 1984, Sec. 1401-1410 of Pub. L. 98-473 as amended by the Children's Justice and Assistance Act of 1986 (CJA), Pub. L. 99-401, and by the Anti-Drug Abuse Act of 1988, title VII, subtitle D, of the Pub. L. 100-690, 42 U.S.C. 10601-10605.

### Background

The Office of Justice Programs, Department of Justice, published a Notice in the **Federal Register** (56 FR 66877, Dec. 26, 1991) announcing the FY 1992 Discretionary Program Plan for its component bureaus, including the Program Plan for the Office for Victims of Crime. The OVC Discretionary Grant Application Kit, announced herein, expands upon information provided in the program plan and defines specific Application requirements and deadlines. Interested applicants should call the toll-free number at 1-800-627-6872 to request a copy of the FY 1992 Discretionary Grant Application Kit.

Brenda G. Meister,

*Acting Director, Office for Victims of Crime.*

[FR Doc. 92-3392 Filed 2-11-92; 8:45 am]

BILLING CODE 4410-18-M

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## DEPARTMENT OF LABOR

## Office of the Secretary

## Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

*Background:* The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

*List of Recordkeeping/Reporting Requirements Under Review:* As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

*Comments and Questions:* Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Occupational Safety and Health Administration

Occupational Safety and Health Administration Test of Revised OSHA, Forms No. 101 and OSHA No. 200, Reporting (non-recurring), State or local governments; businesses or other for-profit; small businesses or organizations, 189 respondents; 271 total burden hours, 1.43 average hours per response.

The purpose of the data collection is to obtain input on the comprehensibility of the data elements and the format (detail an ease of use) of the proposed revised OSHA forms No. 200 and No. 101 from people who will be filling out and retrieving information from the forms.

Signed at Washington, DC, this 6th day of February, 1992.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 92-3380 Filed 2-11-92; 8:45 am]

BILLING CODE 4510-26-M

## Employment and Training Administration

## Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1992 Agricultural Adverse Effect Wage Rates; and Allowable Charges for Agricultural and Logging Workers' Meals

**AGENCY:** U.S. Employment Service, Employment and Training Administration, Labor.

**ACTION:** Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1992.

**SUMMARY:** The Director, U.S. Employment Service, announces 1992 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H-2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeing nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H-2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

**EFFECTIVE DATE:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Litman, Acting Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-535-0157 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H-2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (DOL) for an H-2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H-2A program require that covered employers offer and pay their U.S. and H-2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also FR 20496, 20502-20505) June 1, 1987).

### A. Adverse Effect Wage Rates (AEWRs) for 1992

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H-2A) agricultural workers. DOL emphasizes, however, that such employees must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR part 655, subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H-2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1992 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1992 ADVERSE EFFECT WAGE RATES (AEWRS)

| State | 1992 AEWR |
|---|---|
| Alabama | $4.91 |
| Arizona | 5.17 |
| Arkansas | 4.73 |
| California | 5.90 |
| Colorado | 5.29 |
| Connecticut | 5.61 |
| Delaware | 5.39 |
| Florida | 5.68 |
| Georgia | 4.91 |
| Hawaii | 7.95 |
| Idaho | 4.94 |
| Illinois | 5.59 |
| Indiana | 5.59 |
| Iowa | 5.15 |
| Kansas | 5.36 |
| Kentucky | 5.04 |
| Louisiana | 4.73 |
| Maine | 5.61 |
| Maryland | 5.39 |
| Massachusetts | 5.61 |
| Michigan | 5.16 |
| Minnesota | 5.16 |
| Mississippi | 4.73 |
| Missouri | 5.15 |
| Montana | 4.94 |
| Nebraska | 5.36 |
| Nevada | 5.29 |
| New Hampshire | 5.61 |
| New Jersey | 5.39 |
| New Mexico | 5.17 |
| New York | 5.61 |
| North Carolina | 4.97 |
| North Dakota | 5.36 |
| Ohio | 5.59 |
| Oklahoma | 4.87 |
| Oregon | 5.94 |
| Pennsylvania | 5.39 |
| Rhode Island | 5.61 |
| South Carolina | 4.91 |
| South Dakota | 5.36 |
| Tennessee | 5.04 |
| Texas | 4.87 |
| Utah | 5.29 |
| Vermont | 5.61 |
| Virginia | 4.97 |
| Washington | 5.94 |
| West Virginia | 5.04 |
| Wisconsin | 5.16 |
| Wyoming | 4.94 |

### B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H-2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H-2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR

655.202(b)(4) and 655.211(a) to covered H-2B logging employers. These rules provide for annual adjustments of the previous year's allowable charge based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI-U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI-U for Food between December of the year just past and December of the year prior to that. The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1991 rates were published in a notice on February 26, 1991 at 56 FR 7880.

DOL has determined the percentage change between December of 1990 and December of 1991 for the CPI-U for Food was 2.9 percent.

According, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1992 are as follows: (1) for 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $6.58 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $8.23 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 21st day of January, 1992.

**Robert J. Litman,**

*Acting Director, U.S. Employment Service.*

[FR Doc. 92-3381 Filed 2-11-92; 8:45 am]

BILLING CODE 4510-30-M

## Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

**ADDRESSES:** Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the Attestation Process:*

The Employment and Training Administration has established a voicemail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

*Regarding the Complaint Process:*

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries In

addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 5th day of February 1992.

**Robert J. Litman,**

*Acting Director, United States Employment Service.*

## DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Peter Petruzzi, Humana Hospital, 911 Big Cove Rd., Huntsville, 35801, 205-532-5600. | AL | 1/03/92 |
| Mr. Charles C. Colvert, Shelby Medical Center, 1000 First Street, Alabaster 35007, 205-663-8100. | AL | 1/03/92 |
| Mr. Hugh D. Means, Springdale Mem. Hosp., 607 Maple Street, Springdale 72764, 501-751-5711. | AR | 1/17/92 |
| Mr. Eldon Dingler, St. Vincent Infirmary, Inc., Two St. Vincent Circle, Little Rock 72205, 501-660-3000. | AR | 1/24/92 |
| Mr. Randall O'Donnell, Arkansas Children's Hosp., 800 Marshall Street, Little Rock 72202, 501-320-1398. | AR | 1/24/92 |
| J.D. Stahl, Silver Ridge Village, Life-Co, 2812 Silver Creek Road, Bullhead City, 86442, 602-763-1404. | AZ | 1/31/92 |
| Ms. Bernice Schrabeck, Walnut Whitney Conv. Hosp., Sierra Med. Ctr., Carmichael 95608, 916-624-6230. | CA | 1/03/92 |
| Mr. Bill Mathias, DBA Oak Meadows Conval. Ctr., 350 De Soto Drive, Los Gatos 95030, 916-635-3806. | CA | 1/09/92 |
| Mr. William W. Daniel, Pioneers Memorial Host. Dist., 207 West Legion Road, Brawley, 92227 619-344-2120. | CA | 1/10/92 |
| Mr. Jerry A. Levine, Hebrew Home for the Aged Disabled, San Francisco 94112, 415-334-2500. | CA | 1/10/92 |
| Mr. Joel Bergenfeld, Century City Hospital, 2070 Century Park East, Los Angeles 90067, 213-201-6660. | CA | 1/10/92 |
| Mr. Kenneth Willes, Parkview Comm. Hosp. Med. Ctr., 3865 Jackson Street, Riverside 92503, 714-688-2211. | CA | 1/16/92 |

## DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Frank Nachtman, Marshall Hospital, Marshall Way, Placerville 95667, 916-622-1441. | CA | 1/16/92 |
| Mr. Edward Renford, Martin Luther King Jr./Drew Med. Ctr., Los Angeles 90059, 213-603-5201. | CA | 1/24/92 |
| Mr. Bruce Perry, Sierra Comm. Hosp., 2025 E. Dakota, Fresno 93726, 209-221-5600. | CA | 1/24/92 |
| Mr. Bruce Perry, Fresno Comm. Hosp. & Med. Ctr., Fresno and R Sts., Fresno 93701, 209-442-6000. | CA | 1/24/92 |
| Mr. Bruce Perry, Clovis Comm. Hosp., 2755 Herndon, Clovis 93612, 209-323-4000. | CA | 1/24/92 |
| Mr. Steven R. Fraser, Orangegrove. Rehab. Hosp., 12332 Garden Grove Blvd., Garden Grove 92643, 714-534-1041. | CA | 1/24/92 |
| Mr. Douglas Bagley, Olive View Med. Ctr., 14445 Olive View Drive, Sylmar 91342, 818-364-1555. | CA | 1/24/92 |
| Sister Marie Madeleine, Saint John's Hosp. & Health Ctr., 2020 Santa Monica Blvd., Santa Monica 90404, 213-829-8633. | CA | 1/30/92 |
| Mr. C. Larry Carr, Bakersfield Mem. Hosp., 420-34th Street, Bakersfield 93301, 805-327-1792. | CA | 1/31/92 |
| Mr. Mark J. Funanage, United Nurses, Inc., 12444 Victory Blvd., North Hollywood 91606, 818-509-0996. | CA | 1/31/92 |
| Mr. Sheldon S. King, Cedars-Sinai Med. Ctr., 8700 Beverly Blvd., Los Angeles 90048, 213-855-5000. | CA | 1/31/92 |
| Mr. Joseph A. Zaccagnino, Yale New Haven Hospital, 20 York Street, New Haven 06504, 203-785-2414. | CT | 1/24/92 |
| Mr. Kevin E. Lofton, Howard U. Hospital, 2041 Georgia Ave. NW., Washington 20060, 202-865-1521. | DC | 1/10/92 |
| Steven Wenzel, Brooksville Regional Hospital, 55 Ponce De Leon Blvd., Brooksville 34605, 904-544-6150. | FL | 1/15/92 |
| Mr. Ronald A. Cass, Hosp. Staffing Serv. Inc., 6245 N. Federal Hwy., Fort Lauderdale 33308, 305-771-0500. | FL | 1/17/92 |
| Mr. Andrew Orange, Jr., HCA New Port Richey Hosp. Med. Ctr., New Port Richey 34656, 813-845-9117. | FL | 1/24/92 |
| Mr. Thomas L. Werner, Florida Hospital, 601 E. Rollins, Orlando 32803, 407-896-6611. | FL | 1/24/92 |
| Mr. Stephen Sutherlin, Humana Hospital, Humhosco, Inc. t/a, St. Petersburg 33709, 813-521-5073. | FL | 1/24/92 |
| Mr. Ralph R. Aleman, Victoria Hosp. Partnership, 955 N.W. Third Street, Miami 33128, 305-545-8050. | FL | 1/30/92 |

## DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Fred D. Hirt, Mount Sinai Med. Ctr., 4300 Alton Road, Miami Beach 33140, 305-674-2517. | FL | 1/30/92 |
| Mr. James A. Hotchkiss, Jr., Villa Maria Nur. & Rehab. Ctr., 1050 N.E. 125 Street, North Miami 33161, 305-891-8850. | FL | 1/30/92 |
| Mr. Edward J. Rosasco, Jr., Mercy Hospital, 3663 South Miami Ave., Miami 33133, 305-285-2100. | FL | 1/31/92 |
| Mr. John Bowling, South Georgia Med. Ctr., P.O. Box 1727, Valdosta 31603, 912-333-1000. | GA | 1/31/92 |
| Mr. Carl E. Roland, Jr., Southwestern State Hospital, P.O. Box 1378, Thomasville 31799, 912-228-2257. | GA | 1/31/92 |
| Mr. Gary K. Kajiwara, Kuakini Health System, 347 N. Kuakini Street, Honolulu 96817, 808-547-9450. | HI | 1/30/92 |
| Ms. Nancy A. Kulas, Skyline Health, Bev. Enterprises, Inc., Pocatello 83201, 206-696-3914. | ID | 1/09/92 |
| Ms. Nancy A. Kulas, Harral's Nursing, Bev. Enterprises, Inc., Buhl 83316, 206-696-3914. | ID | 1/09/92 |
| Ms. Nancy A. Kulas, Orchards Villa, Bev. Enterprises, Inc., Lewiston 83501, 206-696-3914. | ID | 1/09/92 |
| Ms. Nancy A. Kulas, Magic Valley Manor, Bev. Enterprises, Inc., Wendell 83335, 206-696-3914. | ID | 1/09/92 |
| Ms. Nancy A. Kulas, Green Acres Care, Bev. Enterprises, Inc., Gooding 83330, 206-696-3914. | ID | 1/09/92 |
| Ms. Nancy A. Kulas, Payette Lake Care, Bev. Enterprises, Inc., McCall 83638, 206-696-3914. | ID | 1/09/92 |
| Ms. Shirley Dunn, Evergreen Nursing & Conval. Ctr., 1115 N. Wenthe, Effingham 62401, 217-347-7121. | IL | 1/03/92 |
| Mr. Howard L. Wengrow, All American Nursing Home, 5448 N. Broadway, Chicago 60640, 312-334-2224. | IL | 1/03/92 |
| Mr. Jeffrey Webster, Atrium Health Care Center, 1425 W. Estes, Chicago 60626, 312-973-4780. | IL | 1/03/92 |
| Mr. Robert L. Schmelter, Community Hospital of Ottawa, 1100 E. Norris Drive, Ottawa 61350, 815-433-3100. | IL | 1/03/92 |
| Mr. Lexio Quigg, Morgan View Terrace, Ltd., 1024 W. Walnut, Jacksonville 62650, 217-245-5175. | IL | 1/03/92 |
| Mr. Howard L. Wengrow, Hickory Nursing Pavilion, Inc., 9246 S. Roberts Rd., Hickory Hills 60457, 708-598-4040. | IL | 1/03/92 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Morris Esformes, West Chicago Terrace, 928 Joliet Street, West Chicago 60185, 708-231-9292. | IL | 1/10/92 |
| Mr. Jeffrey Webster, Arbour Health Care Center, 1512 W. Estes, Chicago 60626, 312-465-7751. | IL | 1/15/92 |
| Mr. Lucia Lariosa Skokie Meadows Nursing Ctrs., Inc., Skokie 60076, 708-679-4161. | IL | 1/16/92 |
| Mr. Joseph Beard, Convenant Med. Ctr., 1400 West Park, Urbana 61801, 217-337-2224. | IL | 1/16/92 |
| Mr. Benn Greespan, Mt. Sinai Hosp. Med. Ctr., 15th at Calif. Ave., Chicago 60608, 312-650-6653. | IL | 1/24/92 |
| Mr. Eugene Caldwell, St. Agnes Health Care Ctr., 60 E. 18th Street, Chicago, 60616, 312-922-2777. | IL | 1/30/92 |
| Mr. Filipinas Madriaga, Nursing Resource Group, 7256 W. Olive Ave., Chicago 60631, 312-763-4134. | IL | 1/30/92 |
| Mr. Frank Butler, University of Kentucky Hosptial, 800 Rose Street, Lexington 40536, 606-233-5000. | KY | 1/08/92 |
| Mr. Joseph W. Gross, St. Elizabeth Medical Center, 401 E. 20th Street, Covington 41014, 606-292-4000. | KY | 1/10/92 |
| Ms. Ann Markis, DePaul Hosptial, 1040 Calhoun Street, New Orleans 70118, 504-897-5700. | LA | 1/30/92 |
| Sister Barbara Grant, Mercy Hospital, 301 N. Jeff. Davis Pkway., New Orleans 70119, 504-483-5600. | LA | 1/30/92 |
| Mr. Lawrence Beck, The Good Samaritan Hosp. of MD., 5601 Loch Raven Boulevard, Baltimore 21239, 410-532-8000. | MD | 1/15/92 |
| Ms. Darlene Grover, Int'l Nurses Alliance, P.O. Box 661, Brunswick 04011, 207-729-5895. | ME | 1/10/92 |
| Ms. Gail Warden, Henry Ford Hospital & Henry Ford Med. Grp., Detroit, 48202, 313-876-2600. | MI | 1/07/92 |
| Mr. Herbert B. Schneiderman, Saint Louis University Hospital, 3635 Vista, St. Louis 63110, 314-577-8580. | MO | 1/15/92 |
| Mr. Charles Faulkner, Golden Triangle Reg'l Med. Ctr., 2520 5th Street North, Columbus 39701, 601-243-1000. | MS | 1/24/92 |
| Mr. Kyle W. Dilday, Springmoor Life Care Retire., 1500 Sawmill Road, Raleigh 27615, 919-848-7000. | NC | 1/24/92 |
| Mr. John R. Willis, Rex Hospital, 4420 Lake Boone Trail, Raleigh 27606, 919-783-3100. | NC | 1/30/92 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Sister Elizabeth Corry, Our Lady of Lourdes Med. Ctr., 1600 Haddon Ave., Camden 08103, 609-757-3838. | NJ | 1/24/92 |
| Sister Patricia Lynch, Holy Name Hospital, 718 Teaneck Road, Teaneck 07666, 201-833-3000. | NJ | 1/31/92 |
| Mr. Thomas G. Doherty, Bellevue Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/02/92 |
| Mr. Thomas G. Doherty, Elmhurst Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/02/92 |
| Mr. Thomas G. Doherty, Harlem Hospital Ctr., Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Woodhull Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Coney Island Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Metropolitan Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Goldwater Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Bronx Municipal Hosp., Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Lincoln Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Gouverneur Med. Ctr., Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Coler Memorial Hosp., Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Neponsit Health Care Ctr., Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, Kings County Hospital, Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Thomas G. Doherty, North Central Bronx Hosp., Immigration Program Ser., New York 10013, 212-788-3485. | NY | 1/07/92 |
| Mr. Paqul A. Marks, Mem. Sloan-Kettering Cancer Ctr., 1275 York Avenue, New York 10021, 212-639-3952. | NY | 1/10/92 |
| Mr. William R. Wedral, Putnam Hospital Center, Stoneleigh Avenue, Carmel 10512, 914-279-5711. | NY | 1/15/92 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Martin F. Nester, Jr., Long Beach Memorial Hosp., 455 East Bay Drive, Long Beach 11561, 516-432-8000. | NY | 1/17/92 |
| Mr. Lloyd C. Hardware, The Little Mile Professional Recruitment Agency, Inc., Bronx 10466, 212-547-1679. | NY | 1/24/92 |
| Dr. Ronald Gade, St. Barnabas Hospital, E. 183rd St. & 3rd Ave., Bronx 10457, 212-960-6198. | NY | 1/24/92 |
| Robert K. Match, M.D., Long Island Jewish Med. Ctr., 269-01 76th Ave., New Hyde Park 11042, 718-470-7000. | NY | 1/30/92 |
| Mr. Jacob Reingold, Hebrew Home for the Aged, Riversale/Palis. Nur. Home, Bronx 10471, 212-549-8700. | NY | 1/30/92 |
| Mr. Barry M. Spero, Maimonides Medical Ctr., 4802 Tenth Avenue, Brooklyn 11219, 718-283-6000. | NY | 1/30/92 |
| Mr. James Davis, Amsterdam Nursing Home Corp., 1060 Amsterdam Avenue, New York 10025, 212-678-2600. | NY | 1/30/92 |
| Mr. Bertram J. Oppenheimer, M.D., Yonkers Gen'l Hosp., 2 Park Avenue, Yonkers 10703, 914-964-7300. | NY | 1/31/92 |
| Ms. Nancy A. Kulas, Gladstone Convalescent, Bev. Enterprises, Inc., Gladstone 97027, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Powellhurst Nursing, Bev. Enterprises, Inc., Portland 97236, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Corvallis Care, Bev. Enterprises, Inc., Corvallis 97330, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Forest View Care, Bev. Enterprises, Inc., Forest Grove 97116, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Cedarwood Care Center, Bev. Enterprises, Inc., Independence 97351, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Raleigh Care Center, Bev. Enterprises, Inc., Portland 97225, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Hillside Heights, Bev. Enterprises, Inc., Eugene 97401, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Laurelhurst Care, Bev. Enterprises, Inc., Portland 97214, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Centennial Health, Bev. Enterprises, Inc., Portland 97233, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, King City Conval., Bev. Enterprises, Inc., Tigard 97223, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Capitol View, Bev. Enterprises, Inc., Salem 97304, 206-696-3914. | OR | 1/09/92 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[1/01/92 to 1/31/92]

| CEO name/facility name/address | State | Approval date |
|---|---|---|
| Ms. Nancy A. Kulas, Chehalem Convalescent, Bev. Enterprises, Inc., Newburg 97132, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Green Valley, Bev. Enterprises, Inc., Eugene 97401, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Ivorena Care, Bev. Enterprises, Inc., Eugene 97402, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Mountain Park Convalescent, Bev. Enterprises, Inc., Lake Oswego 97034, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Mountain View Conval., Bev. Enterprises, Inc., Oregon City 97045, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Tigard Care Center, Bev. Enterprises, Inc., Tigard 97224, 206-696-3914. | OR | 1/09/92 |
| Ms. Nancy A. Kulas, Camelot Care Center, Bev. Enterprises, Inc., Forest Grove 97116, 206-696-3914. | OR | 1/09/92 |
| Mr. Rich Kramer, Holston Valley Hospital & Med. Center, Kingsport 37662, 615-229-7711. | TN | 1/24/92 |
| Mr. Patrick Wallace, East Texas Med. Ctr.—Athens, 2000 S. Palestine, Athens 75751, 903-675-2216. | TX | 1/10/92 |
| Mr. Robert Reid, Midland Phys. & Surgs. Hosp., 3201 Sage St., Midland 79705, 915-683-2273. | TX | 1/10/92 |
| Mr. Jose Qunitanilla, York Plaza Hospital & Med. Ctr., 2807 Little York Road, Houston 77093, 713-697-2961. | TX | 1/15/92 |
| Mr. William Behnke, Southwestern Gen'l Hosp., 1221 N. Cotton, El Paso 79902, 915-533-9361. | TX | 1/15/92 |
| Ms. Nancy Byrnes, HCA South Arlington Medical Ctr., 3301 Matlock, Arlington 76015, 817-472-4850. | TX | 1/16/92 |
| Sister M. Fatima McCarthy, St. Elizabeth Hospital, 2830 Calder Avenue, Beaumont 77702, 409-899-7165. | TX | 1/17/92 |
| Ms. Jolyn W. Scheirman, JWS Health Consult., Inc., d/b/a Ultrastaff, Houston 77098, 713-522-5355. | TX | 1/23/92 |
| Mr. Jack Chapman, Beaumont Medical Surg. Hospital, 3060 College, Beaumont 77701, 409-839-7113. | TX | 1/24/92 |
| Mr. Pat L. Horn, East Texas Med. Ctr.-Pitts., 414 Quitman St., Pittsburg 75686, 903-856-6663. | TX | 1/30/92 |
| Sam Raney, Hamilton Hospital, 903 West Hamilton Street, Olney 76374, 512-564-5521. | TX | 1/30/92 |
| Mr. Thomas Kennedy, Rolling Plains Mem. Hosp., 200 E. Arizona, Sweetwater 79556, 915-235-1701. | TX | 1/30/92 |
| Mr. Richard Kraus, HCA Chippenham Med. Ctr., 7101 Jahnke Rd., Richmond 25225, 804-323-8785. | VA | 1/24/92 |
| Ms. Nancy A. Kulas, Palouse Hills Conval. Ctr., Bev. Enterprises, Inc., Pullman 99163, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Willipa Harbor, DBA, 1100 Jackson Street, Raymond 98577, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Hillcrest Nursing, DBA, 912 Hillcrest Avenue, Grandview 98930, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Linn Care Center, Bev. Enterprises, Inc., Albany 97321, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Rose Vista, Bev. Enterprises, Inc., Vancouver 98661, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Meadow Glade, 11117 NE 189th Street, Battleground 98604, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Renton Terrace, Bev. Enterprises, Inc., Renton 98055, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Monarch Care Center, Bev. Enterprises, Inc., Seattle 98198, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Lilac City Convalescent, DBA Bev. Enterprises, Inc., Spokane 99207, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Hillcrest Manor, Bev. Enterprises, Inc., Sunnyside 98944, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Sunny Haven, Bev. Enterprises, Inc., Sunnyside 98944, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Clearview Manor, Bev. Enterprises, Inc., Tacoma 98404, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Highland Terrace, DBA, P.O. Box 1148, Camas 98607, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Midway Manor Conval. Ctr., Bev. Enterprises, Inc., Des Moines 98661, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Wildwood Health, DBA, 909 South Meridian, Puyallup 98371, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Hillcrest Convalescent, DBA, 2004 North 22nd Street, Pasco 99301, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Othello Convalescent, DBA, 495 N 13th Street, Othello 99344, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Benson Heights DBA, 22410 Benson Road SE., Kent 98031 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Pleasant Acres, DBA, 5129 Hilltop Road, Everett 98203, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Pinewood Terrace, DBA, 1000 East Elep, Colville 99114, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Harbor Health Care, DBA, 308 West King, Aberdeen 98520, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Wedgewood Rehab. Ctr., Bev. Enterprises, Inc., Seattle 98115, 206-696-3914. | WA | 1/09/92 |
| Ms. Nancy A. Kulas, Sherwood Terrace Nur. Home, Bev. Enterprises, Inc., Tacoma 98444, 206-696-3914. | WA | 1/09/92 |
| Ms. Betty Smit, Caravilla, P.O. Box 75, Beloit 63512, 608-365-8877. | WI | 1/03/92 |
| Total Attestations—148 | | |

[FR Doc. 92-3382 Filed 2-11-92; 8:45 am]

BILLING CODE 4510-30-M

## Office of Workers' Compensation Programs

### Adjustment to Federal Employees' Compensation Act Fee Schedule

Under authority provided by 20 CFR 10.411(f), the Director of the Department of Labor's Office of Workers' Compensation Programs (OWCP) may adjust the fee schedule for medical services for injuries covered by the Federal Employees' Compensation Act (FECA). This notice explains how OWCP has modified the fee schedule to reflect recent changes in the standard coding text.

The medical fee schedule was implemented in 1986. The system uses the American Medical Association's (AMA) Physician's Current Procedural Terminology (CPT) coding structure to distinguish services and procedures performed by physicians. The procedures are then assigned relative unit values (RUV's) to codify the relative work value of procedures. The RUV's, the geographic indices assigned to provider's zip codes, and the dollar conversion factors, determine the maximum allowable reimbursable

amount for a particular medical service or procedure.

OWCP has used the RUV's assigned to CPT coded medical procedures by the State of Washington's Department of Labor and Industry under that state's medical fee schedule for industrial injuries. The CPT is revised each year to accommodate the identification of new procedures and to better define contemporary medical practice, and Washington State has traditionally assigned RUV's to those newly coded procedures as changes have been made. Recent CPT coding changes, however, will not be assigned new RUV's by Washington State for at least a year. Since these coding changes involve approximately 35 percent of all items billed, OWCP cannot delay assigning RUV's to the 1992 CPT changes and has, therefore, devised its own formula for assigning RUV's for these new procedure codes.

The formula is based on the Department of Health and Human Services' (HHS) Health Care Financing Administration's (HCFA) medical fee schedule for professional services that is now being applied nationally. The HCFA method is conceptually similar to that used by the State of Washington in assigning RUV's.

The revisions in the 1992 version of the AMA's Current Procedural Terminology, Fourth Edition, affected by the new formula are as follows (the reader should refer to the AMA publication for the narrative descriptions for these codes):

72156 thru 72158
99201 thru 99205
99211 thru 99215
99221 thru 99223
99231 thru 99233
99238
99241 thru 99245
99251 thru 99255
99261 thru 99263
99271 thru 99275
99281 thru 99285
99288
99291 thru 99292

These changes were effective January 17, 1992.

Signed at Washington, DC, on the 6th of February, 1992.

**Lawrence W. Rogers,**

*Director, Office of Workers' Compensation Programs.*

[FR Doc. 92-3383 Filed 2-11-92; 8:45 am]

BILLING CODE 4510-27-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted on or before March 13, 1992.

**ADDRESSES:** Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of the entries are subject to 44 U.S.C. 3504(h).

**Category: Extension**

*Title:* Information Needed for an Indirect Cost Rate.

*Form Number:* 3136-0055.

*Frequency of Collection:* One per year from each respondent.

*Respondents:* Not-for-Profit Institutions.

*Use:* Evaluation of Indirect Cost Rate.

*Estimated Number of Respondents:* 60.

*Frequency of Response:* Depending on type of rate: provisional-annually, predetermined-biennial.

*Estimated Hours for Respondents to Provide Information:* 20 hours per respondent or 1,200 total hours for all respondents.

*Estimated Total Annual Reporting and Recordkeeping Burden:* 1,320 hours.

**Thomas S. Kingston,**

*Assistant Chairman for Operations.*

[FR Doc. 92-3344 Filed 2-11-92; 8:45 am]

BILLING CODE 7536-01-M

### National Endowment for the Humanities

### Humanities Panel Advisory Committee; Renewal

The Humanities Panel Advisory Committee is being renewed for an additional two years.

The Chairman, National Endowment for the Humanities, has determined that the renewal of this committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Endowment for the Humanities by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: February 6, 1992.

**David C. Fisher, Jr.**

*Advisory Committee Management Officer.*

[FR Doc. 92-3245 Filed 2-11-92; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

### Renewal of Charter for the Nuclear Safety Research Review Committee

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of renewal of the Nuclear Safety Research Review Committee.

**SUMMARY:** The Nuclear Safety Research Review Committee was established by the Nuclear Regulatory Commission as a Federal advisory committee in February 1988 to provide advice to the Director, Office of Nuclear Regulatory Research, on matters relating to NRC's nuclear safety research programs. The committee is composed of experts capable of providing a wide variety of technical and managerial viewpoints

drawn from industrial, national laboratory, university and not-for-profit research organizations.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the General Services Administration, the Nuclear Regulatory Commission has determined that there is a continuing need for the Nuclear Safety Research Review Committee and that renewal of the committee for a two-year period beginning February 9, 1992, is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Sege, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3904.

Dated: February 6, 1992.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 92-3340 Filed 2-11-92; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Nuclear Waste; Revision of Meeting Agenda

The agenda for the 40th Advisory Committee on Nuclear Waste (ACNW) scheduled to be held on Thursday and Friday, February 20 and 21, 1992, 8:30 a.m.-5 p.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD has been revised. Notice of this meeting was published previously in the **Federal Register** on Monday, February 3, 1992 (57 FR 4070).

The agenda for the subject meeting shall be as follows:

A. Continue work on a systems analysis approach to review the overall high-level waste program.

B. Report on EPRI follow-on meeting concerning the EPA's High-Level Waste Standards.

C. Hear a presentation on the latest draft of EPA's high-level waste standards.

D. Report on recent attendances at the Low-Level Waste Forum Winter Meeting in San Diego, CA.

E. Report on recent visit with Dr. David Morrison of NRC's Nuclear Safety Research Committee.

F. 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: February 6, 1992.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 92-3342 Filed 2-11-92; 8:45 am]

BILLING CODE 7590-01-M

## Amendment to License Approving Change to a Reclamation Plan for an Inactive Uranium Recovery Facility—Bear Creek

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Approval of revision to reclamation plan for an inactive uranium recovery facility.

1. Description of Federal Action

In accordance with a memorandum of understanding (MOU) between the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) published in the **Federal Register** on October 25, 1991, (Volume 56, No. 207, pp. 55432-55435), NRC hereby notices the approval of a request to revise a reclamation plan from Bear Creek Uranium Company, a subsidiary of Union Pacific, for their Bear Creek Uranium Mill, Docket No. 40-8452, Source Material License No. SUA-1310.

This request, dated September 30, 1986, and subsequent submittals justify modification of the reclamation and closure plan approved by the NRC as part of the license renewal on September 28, 1984. The basis for this change is the decrease in the volume of tailings due to premature shutdown of the mill.

The NRC staff has reviewed the proposed reclamation plan against current design guidance and determined that it meets or exceeds the requirements of 10 CFR part 40, appendix A. In accordance with the above referenced MOU, the intent to approve the revised reclamation plan was published in the **Federal Register** on December 20, 1991 (Volume 56, Number 245, page 66089). A 45-day period was provided for receipt of comments regarding NRC's intent to amend the Bear Creek Uranium Company license; none were received. Therefore, the Bear Creek Uranium Company reclamation plan was approved and their license was amended on February 4, 1992.

2. Contact

Copies of the license amendment request, the staff analysis which is the basis for revision to the license, and the license amendment are available for inspection at the Uranium Recovery Field Office, 730 Simms, suite 100, Lakewood, Colorado, and at the Public Document Room, 2120 L Street, NW., Washington, DC. Comments or questions regarding the licensing action may be directed to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

Subject: Amendment—Bear Creek

Dated at Denver, Colorado, this 2d day of February 1992.

For the Nuclear Regulatory Commission.

**Ramon E. Hall,**

*Director, Uranium Recovery Field Office, Division of Radiation Safety and Safeguards, Region IV.*

[FR Doc. 92-3341 Filed 2-11-92; 8:45 am]

BILLING CODE 7590-01-M

# OFFICE OF PERSONNEL MANAGEMENT

## Performance Review Board

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**DATES:** February 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mary K. Hill, Executive Personnel Division Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202-606-2420).

**SUPPLEMENTARY INFORMATION:** Section (c)(1) through (5) of title 5 U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

**Constance Berry Newman,**

*Director, Office of Personnel Management.*

The Members of the Performance Review Board Are:

1. Judy Van Rest, Chief of Staff, Office of the Director-Chair.
2. Dona Wolf, Director, Human Resources Development Group.
3. Curtis J. Smith, Associate Director, Retirement and Insurance Group.
4. Claudia Cooley, Associate Director, Personnel Systems and Oversight Group.
5. Leonard R. Klein, Associate Director, Career Entry Group.
6. Steven R. Cohen, Regional Director, Chicago.
7. Patricia W. Lattimore, Associate Director, Administration Group.

[FR Doc. 92-3247 Filed 12-11-92; 8:45 am]

BILLING CODE 6325-01-M

## PENSION AND WELFARE BENEFITS ADMINISTRATION

**[Application No. D-8337]**

### Amendment to Prohibited Transaction Exemption (PTE) 77-8 Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans To Plan Participants, Certain Beneficiaries of Plan Participants, Employers and Other Employee Benefit Plans

**AGENCY:** Pension and Welfare Benefit Administration, Department of Labor.

**ACTION:** Adoption of amendment to PTE 77-8, and redesignation as PTE 92-6.

**SUMMARY:** This document amends PTE 77-8, a class exemption that enables an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan or, (4) another employee benefit plan, for the cash surrender value of the contracts, provided specified conditions are met. The amendment affects, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

**EFFECTIVE DATE:** The amendment to PTE 77-8 is effective as of October 22, 1986.

**FOR FURTHER INFORMATION CONTACT:** Eric Berger of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 523-8971 (This is not a toll-free number.); or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9597. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On July 11, 1991, notice was published in the **Federal Register** (56 FR 31679) of the pendency before the Department of a proposed amendment to PTE 77-8 (42 FR 31574, June 21, 1977). PTE 77-8 provides an exemption from the restrictions of section 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code.

The amendment to PTE 77-8 adopted by this notice was requested in an exemption application dated August 16, 1989, by the American Council of Life Insurance.[1] The exemption application was submitted pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code [2] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment. Public comments were received pursuant to the provisions of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

For the sake of convenience, the entire text of PTE 77-8, as amended, has been reprinted with this notice. The Department has redesignated the exemption as PTE 92-6.

#### Description of the Exemption

PTE 77-8 permits an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan, or (4) another employee benefit plan, for the cash surrender value of the contracts, provided the conditions set forth in the exemption are met. As of the date PTE 77-8 was granted, section 408(d) of the Act provided that no exemption could be granted under section 408(a) of the Act for transactions of the type described in the exemption between a plan and certain persons such as an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or a shareholder-employee (as defined in section 1379 of the Internal Revenue Code of 1954). The exemption is, however, applicable to such persons for purposes of section 4975 of the Code.

The amendment to PTE 77-8 granted pursuant to this notice expands the coverage of the exemption to include transactions with owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) and shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982).

The Department notes that all the conditions contained in PTE 77-8 still must be met under the amendment. These conditions include a requirement that the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan. Additionally, the exemption requires that, with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

#### Written Comments

The Department received three letters supporting the proposed amendment to PTE 77-8.

[1] The applicant also requested, and the Department is publishing elsewhere in this issue of the Federal Register, a similar amendment to PTE 77-7 (42 FR 31575, June 21, 1977).

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

**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 does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; 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) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amendment is supplemental to, and not in derogation of, any other provisions of the Act and 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.

**Exemption**

Accordingly, PTE 77–8 is amended 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 ERISA Procedure 75–1, as set forth below.

I. Effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)((A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to (1) a participant under such plan; (2) a relative of a particular under such plan; (3) an employer, any of whose employees are covered by the plan; or (4) another employee benefit plan, if—

(1) Such participant is the insured under the contract;

(2) Such relative is a "relative" as defined in section 3(15) of the Act (or is a "member of the family)" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and is the beneficiary under the contract;

(3) The contract would, but for the sale, be surrendered by the plan;

(4) With respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative or other plan;

(5) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan; and

(6) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 5d day of February, 1992.

**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 92–3348 Filed 2–11–92; 8:45 am]

BILLING CODE 7708–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**SUMMARY OF PROPOSALS:**

(1) *Collection title:* Placement Service.

(2) *Form(s) submitted:* ES–2, ES–20a, ES–20b, ES–21, ES–21c, and UI–35.

(3) *OMB Number:* 3220–0057.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, State or local governments, Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 52,900.

(9) *Total annual responses:* 59,600.

(10) *Average time per response:* See supporting statement.

(11) *Total annual reporting hours:* 4,467.

(12) *Collection description:* Under the RUIA, the Railroad Retirement Board provides job placement assistance for unemployed railroad workers. The collection obtains information from job applicants, railroad and non-railroad employees, and State Employment Service Offices for use in placement, for providing referrals for job openings and reports of referral results and for verifying and monitoring claimant eligibility.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

**Dennis Eagan,**

*Clearance Officer.*

[FR Doc. 92–3243 Filed 2–11–92; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

February 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

U.S. Alcohol Testing of America, Inc.
Common Stock, $.01 Par Value (File No. 7-7913)
Brown & Sharp Manufacturing Co.
Common Stock, $1.00 Par Value (File No. 7-7914)
Delta Woodside Industries
Common Stock, $.01 Par Value (File No. 7-7915)
Fisher Scientific International
Common Stock, $.01 Par Value (File No. 7-7916)
Granda Biosciences, Inc.
Common Stock, $.10 Par Value (File No. 7-7917)
Olin Corp.
Series A, Conv. Pfd. $1.00 Par Value (File No. 7-7918)
St. Pauls Co's, Inc.
Common Stock, No Par Value (File No. 7-7919)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Johathan G. Katz,**

*Secretary.*

[FR Doc. 92-3279 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30337; File No. SR-GSCC-91-6]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Billing Procedure Modifications

February 4, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1991, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, GSCC will discontinue its practice of billing members in advance for their anticipated business during the following month and, instead, bill members for anticipated business for the current month and any adjustments for actual use during the previous month.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC 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*

On January 4, 1990, the Commission approved rule filing SR-GSCC-89-15, which authorized GSCC to bill its members at the beginning of each month for such member's anticipated fee obligations for that month and for the following month (with an adjustment made to take into account any overcharge or undercharge made with regard to the member's activity during the previous month). The Commission's approval was issued on an accelerated, temporary basis until July 31, 1990.[1]

On August 6, 1990, the Commission approved rule filing SR-GSCC-90-04, which requested an extension, until July 31, 1991, of GSCC's authority to pre-bill members.[2]

On July 24, 1991, the Commission approved rule filing SR-GSCC-91-02, which requested an extension, until July 31, 1992, of GSCC's authority to pre-bill members.[3]

On October 24, 1991, the Board of Directors of GSCC determined that it would be appropriate from a financial perspective for GSCC to discontinue by the end of 1991, on a permanent basis, billing members in advance for their anticipated business during the following month. Thus, beginning in December of 1991, GSCC's monthly billing will not charge members for their anticipated business during the following month.

To make this transition, the December 1991 billing will only adjust for the difference between the estimated and actual amounts of business done in the previous month (November 1991). Starting in January 1991, each billing will charge for anticipated business for that current month, and will adjust for actual business done during the previous month.

The proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and Rule 17A thereunder.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

GSCC does not believe that the proposed rule change would impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not solicited by GSCC for the proposed rule change, and none have been received. Members will be notified of the rule filing, and comments will be solicited by an "Important Notice." GSCC will notify the Commission of any written comments it receives.

[1] Securities Exchange Act Release No. 27561 (January 4, 1990), 55 FR 1151.

[2] Securities Exchange Act Release No. 28315 (August 6, 1990), 55 FR 32719.

[3] Securities Exchange Act Release No. 29479 (July 24, 1991), 56 FR 36183.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 because it changes the fee structure imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**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 regarding the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–91–6 and should be submitted by March 4, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92–3278 Filed 2–11–92; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Margaretten Financial Corporation
Common Stock, $.01 Par Value (File No. 7–7920)
National Re Holdings Corp.
Common Stock, No Par Value (file No. 7–7921)
Olin Corporation
Series A Conversion Preferred Stock, No Par Value (File No. 7–7922)
Strategic Global Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–7923)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92–3280 Filed 2–11–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–30342; File No. SR–NASD–92–4]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Charge for Fingerprint Cards Submitted to the Association

February 6, 1992.

Pursuant to section 19(b)1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 73s(b)(1), notice is hereby given that on February 3, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a fee imposed exclusively on its members under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to Amend Schedule A, section 14 to the NASD By-Laws to amend the charge for fingerprint cards submitted to the NASD. Below is the text of the proposed rule change. Proposed deletions are in brackets.

*Schedule A to the NASD By-Laws*

Section 14—Service Charge for Fingerprints Submitted

In addition to such charge as may be imposed by the United States Department of Justice, there shall be a service charge of $2.50 for each fingerprint card submitted[, and $1.50 for each fingerprint card re-submitted.] to the Association's Membership Department.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

Section 14 of Schedule A to the By-Laws was added in September 1989 in order to permit the NASD to recover some of the cost of processing fingerprint card submissions made in connection with applications for registration as an associated person. Currently, section 14 specifies that there shall be a service charge of $2.50 for each fingerprint card submitted to the NASD, and $1.50 for each fingerprint card resubmitted. The NASD charges

are in addition to any charges imposed by the U.S. Department of Justice.[1]

The U.S. Department of Justice recently changed its fees and procedures for fingerprint card submissions by imposing new fees for resubmitted cards. The new procedures impose a substantial new fee collection and procedural burden on the NASD. Accordingly, the NASD is proposing to eliminate the distinction in charges between original submissions and resubmissions and make the charge a uniform $2.50 for all fingerprint cards submitted to the NASD.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a fee imposed exclusively upon the members of the NASD.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 4, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3374 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The requirement that associated persons submit fingerprints is set forth in SEC Rule 17f-2.

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**[Release No. 34- 30341; File No. SR-NASD-91-68]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Forwarding of Proxy Material

February 6, 1992.

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 December 19, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is herewith filing a proposed rule change to the Interpretation of the Board of Governors—Forwarding of Proxy and Other Materials, Article III, section 1 of the NASD Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

**Article III**

*Rules of Fair Practice*

Business Conduct of Members

Section 1. A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

* * * * *

*Interpretation of the Board of Governors*

Forwarding of Proxy and other Materials

Introduction

.05 A member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward *(i)* all proxy material[,] *which is properly furnished to it by the issuer of the securities or a stockholder of such issuer, to each beneficial owner of shares of that issue which are held by the member for the beneficial owner thereof and (ii) all* annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities, to each beneficial owner of shares of that issue which are held by the member for the beneficial owner thereof. For the assistance and guidance of members in meeting their responsibilities, the Board of Governors has promulgated this interpretation. The provisions hereof shall be followed by all members and failure to do so shall constitute conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice of the Association.

Interpretation

* * * * *

Section 2. Whenever an [person] *issuer or stockholder of such issuer* soliciting proxies shall timely furnish to a member:

(1) sufficient copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation,

such member shall transmit promptly to each beneficial owner of stock of such issuer which is in its possession or control and registered in a name other than the name of the beneficial owner all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall

[1] On January 30, 1992, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 clarifies the descriptive language of the proposal and does not reflect substantive changes.

furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Rule 17a-4 of the General Rules and Regulations under the Securities Exchange Act of 1934, 17 CFR 240.17a-4. Notwithstanding the provisions of this section, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

This section shall not apply to beneficial owners residing outside of the United States of America though members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

## II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspect of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In May 1991, staff of the Division of Market Regulation of the Securities and Exchange Commission requested that the NASD consider amending the Interpretation of the Board of Governors—Forwarding of Proxy and Other Material, Article III, section 1 of the NASD Rules of Fair Practice (the "Interpretation") to require NASD members to forward proxy material to beneficial owners at the request of persons other than the issuer, i.e. stockholders. Currently, the Interpretation requires NASD members to forward proxy material to beneficial owners upon the request by the issuer, but does not extend the duty to forward upon a request by other persons who are shareholders of the issuer.[2]

Upon review, the NASD believes that a potential exists for disruption in proxy communications in circumstances where stockholders in possession of the stockholder lists request NASD members to forward proxy material to beneficial owners. Currently, only those NASD members that are affiliated with the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") are required to forward such proxy material upon the request of a "person" other than the issuer of the stock.[3]

The forwarding of such proxy material for non-issuers is not currently required under the proxy rules adopted by the Commission in accordance with the Act. Pursuant to Rule 14a-7 of Regulation 14A of the Act, an issuer may choose to give the list of record holders to a stockholder for purposes of proxy solicitation. Pursuant to Rule 14b-1(e)(1) of the Act, registered brokers an dealers are only required to forward material to beneficial owners if a "registrant" provides assurance of reimbursement of reasonable expenses. Under current practice, a registrant normally would not provide to a broker or dealers an assurance of reimbursement for services rendered by a member in forwarding proxy material upon the request of a person that is not the issuer. Therefore, a broker's or dealer's duty to forward under Rule 14b-1(e)(1) would not normally exist regarding nonissuer requests to forward proxy material.

The NASD is not aware of an occurrence wherein proxy material has not been forwarded by NASD members to beneficial owners upon the request of a stockholder other than the issuer. However, the NASD proposes to eliminate the potential for any such disruption in the forwarding of proxy material to beneficial owners by amending the Interpretation to clarify that NASD members are required to forward proxy material upon the request of either the issuer of the securities or a stockholder of such issuer.

The proposed rule change is consistent with the provisions of section 15A(b)((6) of the Act, which requires, among other things, that the rules of the Association be designed to "foster cooperation and coordination with person 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 NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 4, 1992.

[2] The Interpretation was recently amended to require the forwarding of material other than proxy material upon the request of the issuer. SEC Rel. No. 34-29512 (July 31, 1991).

[3] NYSE affiliated members currently are required to forward proxy material upon the request of a "person" pursuant to NYSE Rule 451. AMEX affiliated members currently are required to forward proxy material upon the request of a "person" pursuant to AMEX Rule 576.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3375 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30346; File No. SR-OCC-91-17]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to a New Service to Facilitate Risk Analysis

February 6, 1992.

On November 19, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR-OCC-91-17) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] relating to a new service to facilitate risk analysis. On December 11, 1991, the Commission published the proposal in the **Federal Register** to solicit comments.[2] None were received. This order approves OCC's proposed rule change.

### I. Description

OCC's proposal would convert its new service, the Risk Management System ("RMS"), from pilot to permanent status. RMS is a risk analysis system that uses theoretical market movements to evaluate the risk profile of certain positions in debt and equity securities, securities options, and futures contracts. Since May, 1990, RMS has been operational on a pilot basis for one participant exchange and at least six clearing members.

According to OCC, subsequent to the October 1987 market break, it formulated a plan to develop a risk analysis system based upon its Concentration Monitoring System ("ConMon") [3] and its Theoretical Intermarket Margining System ("TIMS").[4] Based upon this plan, OCC completed development of RMS,[5] which will be used by OCC participant exchanges and clearing members in the assessment and management of the risk of positions maintained in their proprietary, market professional, and customer accounts.[6]

Several of OCC's participant exchanges have mandated that certain of their members, including those that clear the accounts of options market professionals, must submit position and financial information to OCC for RMS processing. OCC will provide the results of RMS processing for such members to the appropriate participant exchanges. Each participant exchange will be required to execute a Risk Management System Participant Exchange Agreement ("RMS Participant Exchange Agreement").

OCC clearing members that subscribe to RMS will be required to execute a Risk Management System Clearing Member Agreement ("RMS Clearing Member Agreement"). Those OCC clearing members that submit data to OCC pursuant to a participant exchange mandate but that elect not to subscribe to RMS will not be required to execute an RMS Clearing Member Agreement as such clearing members will not receive the results of RMS processing.

Both the RMS Participant Exchange Agreement and the RMS Clearing Member Agreement (collectively "RMS Agreements") state that OCC shall have no liability for any damage or loss suffered by RMS users in connection with their use of RMS or the information therefrom except upon a clear showing of OCC's knowing or intentional misconduct. The RMS Agreements further provide that OCC shall have no liability if OCC is unable to conduct or complete RMS processing or if OCC is unable to maintain the availability of RMS as a result of power outages, fires, computer malfunctions, acts of public authorities, natural disasters, or other causes beyond the control of OCC. In addition, the RMS Agreements provide that OCC shall have no liability for consequential damages.

### II. Discussion

The Commission believes that OCC's proposal is consistent with the Act and particularly with section 17A(b)(3)(F).[7] That section requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible and to protect investors and the public interest. OCC's proposal should provide increased protection to OCC and its participants by enabling its participants to utilize directly OCC's proven risk management systems for the purpose of establishing a framework for risk management.

The Commission also believes that the proposal is consistent with section 17A(a)(1)(C) of the Act.[8] That section recommends using new data processing and communications techniques in order to achieve more efficient, effective, and safe procedures for clearance and settlement. OCC's RMS service will help accomplish these goals by providing OCC participants access to a sophisticated computer risk analysis system that otherwise would not be available to them and could help reduce systemic risk.

The Commission also believes that the terms of the RMS Agreements that limit OCC's liability are consistent with the Act. As noted above, section 17A(b)(3)(F) [9] of the Act requires clearing agencies to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. However, the Act does not specifically delineate the standard of care that must be exercised in connection with this responsibility. The Commission has determined that a federal standard of care is generally not appropriate for the governance of clearing agency activities. However, the Commission has determined that a gross negligence standard of care is acceptable for non-custodial functions where the parties agree contractually to limit liability.[10] A

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 30023 (December 3, 1991), 56 FR 64873.

[3] ConMon identifies concentrations in clearing margin portfolios and monitors the financial risk associated with clearing member options positions. If OCC's staff determined that a firm's positions lack diversification and therefore violate certain preset parameters, OCC can move the firm to a higher watch level and require additional margin.

[4] TIMS uses options pricing theory to project the cost of liquidating each portfolio of positions in the event of an assumed "worst case" change in the price of the underlying assets. TIMS sets OCC's margin requirements to cover that cost. For a comprehensive description of TIMS, see Securities Exchange Act Release Nos. 23167 (April 22, 1986), 51 FR 1612 ("Non-Equity TIMS") and 28929 (March 1, 1991), 56 FR 9985 (Equity TIMS").

[5] Based upon favourable comments from RMS pilot participants and the results of ongoing OCC reviews of RMS, several enhancements to RMS have been installed during the pilot period or are currently being installed. In addition, OCC anticipates performing continual, ongoing reviews of RMS which will result in further enhancements to the system.

[6] OCC has represented that RMS operations will not affect OCC's capacity to clear options transactions because RMS processing does not begin until nightly processing is completed.

[7] 15 U.S.C. 78q-1(b)(3)(F).

[8] 15 U.S.C. 78q-1(a)(1)(C).

[9] 15 U.S.C. 78q-1(b)(3)(F).

[10] In a release setting forth standards to be used by the Division of Market Regulation ("Division") in evaluating clearing agency registration applications, the Division urged clearing agencies to embrace a strict standard of care in safeguarding participants' funds and securities (Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 4192 ("Standards Release")). In a subsequent release, however, the Commission indicated that it did not believe that sufficient justification existed at that time to require a unique federal standard of care for

Continued

custodial function can be defined generally as any function that directly or substantially affects participants' securities or funds that are in a clearing agency's possession or control.[11] The Commission believes that OCC's RMS service is not a custodial function because it is an ancillary service that merely allows OCC participants to access certain risk management data created by OCC. Should the RMS service break down, participant securities and funds in OCC's possession will not be jeopardized directly as a result. Accordingly, the proposed standard of care is consistent with the Act.

### III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 174 of the Act.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR-OCC-91-17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3373 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

registered clearing agencies (Securities Exchange Act Release No. 22940 (February 24, 1986), 51 FR 7169). Finally, in a release granting the approval of temporary registration as a clearing agency for the International Securities Clearing Corporation ("ISCC"), the Commission indicated that, historically, it has left to user-governed clearing agencies the question of how to allocate losses associated with non-custodial, data processing, clearing agency functions and has approved clearing agency services embodying a gross negligence standard of care (Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691).

[11] For example, OCC's service of matching and netting trades for purposes of settlement is a custodial function because it directly affects participant funds or securities in OCC's custody or control and because any breakdown or mistake in the rendering of such service might cause monetary damage to a participant.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30-3(a)(12).

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities.

Marriott Corporation
Preferred Stock (File No. 7-7924)
Boise Cascade Corporation
Depositary Shares, Preferred Stock (File No. 7-7925)
American Adjustable Rate Term, Inc.—1998
Common Stock, $.01 Par Value (File No. 7-7926)
Strategic Global Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-7927)
Chemical Banking Corporation
Adjustable Rate Cum. Preferred Stock, $1 Par Value (File No. 7-7928)
Fleet Norstar Financial Group
Preferred Depositary Shares (File No. 7-7929)
Environmental Elements Corp.
Common Stock, $.01 Par Value (File No. 7-7930)
Haemonetics Corporation
Common Stock, $0.01 Par Value (File No. 7-7931)
Mellon Bank Corporation
Preferred Stock, $1.00 Par Value (File No. 7-7932)
Southern National Corporation
Depositary Shares (File No. 7-7933)
Argentina Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7934)
Vencor, Inc.
Common Stock, $.25 Par Value (File No. 7-7935)
National Re Holding Corp.
Common Stock, No Par Value (File No. 7-7936)
TransAmerica Corp.
Depositary Shares, Preferred Stock (File No. 7-7937)
Margaretten Financial Corp.
Common Stock, $.01 Par Value (File No. 7-7938)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-3281 Filed 2-11-92; 8:45 am]

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[Rel. No. IC-18530; 811-4958]

## Apollo Institutional Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregulation under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Apollo Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILLING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On December 22, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act. On March 19, 1987, applicant filed a registration statement pursuant to section 8(a) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had one shareholder immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-3369 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-18531; 811-4151]

## Atlas Institutional Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Atlas Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 9, 1984, applicant filed a notification of registration pursuant to section 8(a) of the Act. On April 29, 1985, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had four shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing or articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-3370 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. IC-18529; 812-7752]

## Bessemer Securities Corporation, et al.; Notice of Application

February 5, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Bessemer Securities Corporation, Bessemer Venture Partners L.P., Bessemer Venture Partners II L.P., Bradford Venture Partners L.P., and Bessemer Capital Partners, L.P.

**RELEVANT ACT SECTION:** Exemption requested under section 6(c) from all provisions of the Act.

**SUMMARY OF APPLICATION:** Applicants, investment vehicles substantially owned and controlled by one family and certain persons and entities employed by, controlled by, affiliated with, or otherwise related to members of that family, seek an exemption from all provisions of the Act.

**FILING DATE:** The application was filed on July 10, 1991 and amended on December 20, 1991.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Bessemer Securities Corporation, 630 Fifth Avenue, New York, NY 10111, Attn: R. Daniel Saxe, Jr.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Barry D. Miller, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicants' Representations**

1. Bessemer Securities Corporation ("Bessemer"), incorporated under Delaware law in 1924, is a private investment company which has outstanding one class of securities, its common stock. All of the outstanding common stock of Bessemer is owned by trusts established for the benefit of descendants of Henry Phipps ("Phipps Family Members") and charitable trusts established by Phipps Family Members (collectively, the "Trusts"). None of the Trusts currently owns in excess of 10% of Bessemer's outstanding stock. There are currently 75 Trusts and the number is increasing with each generation of the Phipps family, as most Trusts permit the creation of subtrusts or the transfer in further trust upon the death of an income beneficiary.

2. At no time has there been a public offering of Bessemer stock, nor has Bessemer stock been registered under any of the federal securities laws. Pursuant to an agreement among the holders of Bessemer's stock, each such holder is bound not to sell, pledge or otherwise dispose of its Bessemer shares to third parties without first offering such shares to the other stockholders, except that dispositions are permitted (a) to or in trust for Phipps Family Members, their spouse, or charitable trusts established by Phipps Family Members, and (b) to the executors or administrators of the estate of a Phipps Family Member.

3. The trustees of the Trusts consist solely of one or more of the following: (i) Bessemer Trust Company, a New Jersey chartered bank, (ii) Bessemer Trust Company, N.A., a federally chartered bank, and (iii) Phipps Family Members. The trust companies are wholly-owned subsidiaries of The Bessemer Group Incorporated ("Bessemer Group"), a Delaware corporation registered under the federal Bank Holding Company Act. All of the outstanding stock of Bessemer Group (except for directors' qualifying shares) [1] is beneficially owned by Phipps Family Members or by trusts established for their benefit. In addition, all of Bessemer Group's outstanding stock (except for directors' qualifying shares) is subject to an agreement, similar to the agreement described above with respect to Bessemer stock, that restricts the disposition of Bessemer Group stock.

4. Bessemer Group's board of directors consists of the president/chief executive officer of Bessemer, the president/chief executive officer of Bessemer Group, and five Phipps Family Members. These seven individuals also serve on Bessemer's ten member board of directors, along with three individuals who are neither Phipps Family Members nor employees of Bessemer or any of its affiliates.

5. Bessemer's investments fall into three major categories: Marketable securities, private investments, and real estate. At December 31, 1990, these investments comprised approximately 61%, 30%, and 6%, respectively, of Bessemer's net assets. Bessemer maintains an internal staff of investment professionals which oversees investment decisions concerning its marketable securities investments. In addition, Bessemer obtains investment management services from Bessemer Trust Company, N.A. for its marketable securities portfolio and also may from time to time obtain investment advice from investment banking firms and other third parties with respect to specific investments. Marketable security trades are frequently made through a registered broker-dealer subsidiary of Bessemer Group.

6. The private investment portion of Bessemer's portfolio consists of illiquid majority and minority interests in selected companies with growth potential, often in closely held or privately held companies. These investments are sometimes made directly by Bessemer, but in the majority of cases are made by the Partnerships (see next paragraph), of which Bessemer is the primary or sole limited partner. In connection with its private investments, Bessemer or the relevant Partnership may have representation on the issuer's board of directors or other means of access to information about the issuer.

7. Bessemer Venture Partners L.P. ("Venture"), Bessemer Venture Partners II L.P. ("Venture II"), Bradford Venture Partners L.P. ("Bradford"), and Bessemer Capital Partners, L.P. ("BCP") (collectively, the "Partnerships") are limited partnerships established primarily as vehicles for Bessemer's investment activity in closely held or privately held companies. The ownership and operation of the various Partnerships, except Venture, is discussed below. Venture does not presently intend either to make further investments or to seek additional investors, and contemplates a future liquidation. Applicants represent that the ownership and operation of Venture is substantially similar to Venture II.

8. A wholly-owned subsidiary of Bessemer is the sole limited partner of each of the Partnerships except for BCP. BCP currently has twelve limited partners, including Bessemer (which owns a majority interest), Bradford, and ten natural persons each of whom was, at the time of admission to BCP, an employee or a retired former employee of Bessemer or an affiliate of Bessemer who had a high level of executive, investment management, investment analysis, or administrative responsibility.

9. The general partner of Venture II is Deer II & Co., a general partnership that has five general partners, each of whom is a natural person who actually manages Venture II's investment program. The general partner of Bradford is Bradford Associates, a general partnership that has four general partners, each of whom is a natural person who actually manages Bradford's investment program. The individuals who manage Venture II and Bradford are neither Phipps Family Members nor shareholders, officers, directors, or employees of Bessemer, Bessemer Group, or any affiliate of either. The

[1] Pursuant to federal law, every director of a national bank must own in his or her own right stock in such bank with a par value of at least $1,000 or an equivalent interest in any company that has control over such bank. Accordingly, each director of the trust companies owns at least 100 shares of Bessemer Group.

general partner of BCP is Kylix Partners, L.P. ("Kylix"). Kylix has three general partners, each of which is a subchapter S corporation owned entirely by one natural person. Each of those persons is a member of Bessemer's senior management but not a Phipps Family Member, including the president of Bessemer, who has general management responsibility over Kylix. Kylix has three limited partners, two natural persons and one subchapter S corporation owned by one natural person.

10. The individuals who manage the Partnerships identify and analyze potential investments, request funding from Bessemer for investments, and manage investments made by the Partnerships. Except for Venture II, the decision whether to fund an investment recommended by a Partnership's managers is made on a case-by-case basis by Bessemer's board of directors. In the case of Venture II, Bessemer's board from time to time approves capital contributions to the partnership for investment without necessarily knowing in advance the specific investments to be purchased with such contributions.

11. It is possible that in the future other entities (each, a "Phipps Family Investment Vehicle") will be formed primarily as vehicles for investment by Bessemer (i) to make investments in the manner in which the Partnerships make investments, (ii) to make specifically identified new investments, or (iii) to succeed one or more of the Partnerships. Applicants anticipate that each Phipps Family Investment Vehicle will be funded, managed, and operated in a manner similar to one or more of the Partnerships, although a Phipps Family Investment Vehicle may be structured as a corporation rather than a partnership.

**Applicants' Legal Analysis**

1. Section 3(c)(1) of the Act excepts from the definition of "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities. Each of the applicants is currently excepted from the definition of investment company by reason of section 3(c)(1).

2. Applicants argue that section 3(c)(1) was intended to exclude "private" investment companies from the purview of the Act and that the Commission has authority under section 6(c) to exempt private companies that have more than 100 beneficial owners. Maritime Corporation, 9 SEC 906 (1941). Applicants cite several instances where relief similar to the relief requested herein was granted to private investment companies substantially owned and controlled by members of a single family. See The Richardson Corporation, Investment Company Act Release Nos. 16566 (Sept. 22, 1988) (notice) and 16606 (Oct. 21, 1988) (order); 5600, Inc., Investment Company Act Release Nos. 16004 (Sept. 25, 1987) (notice) and 16067 (Oct. 21, 1987) (order); The O–W Fund, Inc., Investment Company Act Release Nos. 11597 (Feb. 2, 1981) (notice) and 11658 (March 2, 1981) (order).

3. Applicants submit that, even after the 100 shareholder threshold is reached, each of them will continue to be a private investment vehicle to which the Act was not intended to apply. Bessemer is (and has long been) owned entirely by Phipps Family Members and trusts established by Phipps Family Members. Bessemer has not sought and does not seek new investors, either public or private, and there is no market for its shares. Condition 1.c below ensures that Bessemer will continue to be substantially owned and controlled by Phipps Family Mmebers and related persons. Each of the Partnerships is (and each of the Phipps Family Investment Vehicles will be) primarily a vehicle for Bessemer's investment activity and thus should also be viewed as an essentially private enterprise to which the provisions of the Act should not apply. There is no market for interests in any of the Partnerships, and none of the Partnerships seeks investors who are not affiliated with Bessemer or its affiliates. Conditions 2.b and 3.b ensure that the Partnerships and any Phipps Family Investment Vehicles that may be created in the future will be substantially owned and controlled by Bessemer, Phipps Family Members, and related persons. Accordingly, applicants contend that the requested exemption, pursuant to section 6(c) of the Act, is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicants' Conditions**

1. The requested exemption with respect to Bessemer may be conditioned on Bessemer's observance of the following conditions:

a. Bessemer will continue to hold annual meetings of its stockholders for the purpose of electing directors, ratifying the appointment of the independent accountants engaged by Bessemer, and transacting such other business as may properly come before such meetings.

b. Bessemer will continue to furnish annually to its stockholders its financial statements audited by an accounting firm of recognized national standing.

c. Bessemer will be at least 80% owned by or for the benefit of Phipps Family Members and their spouses, Trust beneficiaries, charitable corporations, trusts, and foundations established by descendants of Henry Phipps, and natural persons who, at the time they receive an interest in Bessemer, are employees or retired former employees of Bessemer or an affiliate of Bessemer who have (or had, in the case of retired former employees) a high level of executive, investment management, investment analysis, or administrative responsibility, and any part of Bessemer which is not owned by or for the benefit of such persons will be beneficially owned (as the term is used in section 3(c)(1) of the Act) by not more than 35 persons and will not have been publicly offered.

d. Bessemer will not knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934 any financial information concerning Bessemer for the purpose of knowingly enabling that broker or dealer to initiate any regular trading market for Bessemer's common stock.

2. The requested exemption with respect to each Partnership may be conditioned on the observance by that Partnership of the following conditions:

a. The Partnership will furnish annually to each partner its financial statements audited by an accounting firm of recognized national standing.

b. The Partnership will neither admit as a new partner, nor permit the assignment or transfer of any interest in that Partnership to, any individual or entity if that admission, assignment or transfer would cause that Partnership to fail to have the following characteristics: (a) That Partnership will be at least 90% owned by or for the benefit of the following persons ("Bessemer Investors"): (i) Bessemer or one or more of its subsidiaries, (ii) Phipps Family members and their spouses, (iii) natural persons who, at the time of their admission to the Partnership, are employees or retired former employees of Bessemer or an affiliate of Bessemer who have (or had, in the case of retired former employees) a high level of executive, investment management, investment analysis or administrative responsibility, and (iv) natural persons who, although not employees of Bessemer or an affiliate of Bessemer, actually manage a Partnership's

investments; (b) it will be at least 50% owned by or for the benefit of Bessemer; and (c) any part of the Partnership that is not held by or for the benefit of Bessemer Investors will be beneficially owned (as the term is used in section 3(c)(1) of the Act) by not more than 35 persons and will not have been publicly offered.

c. The Partnership will not (a) admit any new general partner without the approval of a majority in interest of its partners, or (b) have as an investment adviser to that vehicle any investment adviser other than (i) Bessemer and/or one of its affiliates, (ii) one or more employees of Bessemer and/or one of its affiliates, or (iii) a general partner (or one or more of its employees) approved by a majority in interest of the partners.

d. The Partnership will not knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934 any financial information concerning that Partnership for the purpose of knowingly enabling that broker or dealer to initiate any regular trading market in any partnership interest in that Partnership.

3. The requested exemption with respect to each Phipps Family Investment Vehicle may be conditioned on the observance by that Phipps Family Investment Vehicle of the following conditions:

a. The Phipps Family Investment Vehicle will furnish annually to each shareholder, partner or investor its financial statements audited by an accounting firm of recognized national standing.

b. The Phipps Family Investment Vehicle will neither admit as a new investor, nor permit the assignment or transfer of any interest in that Phipps Family Investment Vehicle to, any individual or entity if that admission, assignment or transfer would cause that Phipps Family Investment Vehicle to fail to have the following characteristics: (a) That Phipps Family Investment Vehicle will be at least 90% owned by or for the benefit of Bessemer Investors; (b) it will be at least 50% owned by or for the benefit of Bessemer; and (c) any part of that Phipps Family Investment Vehicle that is not held by or for the benefit of Bessemer Investors will be beneficially owned (as the term is used in section 3(c)(1) of the Act) by not more than 35 persons and will not have been publicly offered.

c. The Phipps Family Investment Vehicle will not (a) admit any new general partner (in the case of a limited partnership) or manager without the approval of a majority in interest of its investors, or (b) have as an investment adviser to that vehicle any investment adviser other than (i) Bessemer and/or one of its affiliates, (ii) one or more employees of Bessemer and/or one of its affiliates, or (iii) an investment adviser (or one or more of its employees) approved by a majority in interest of the investors.

d. The Phipps Family Investment Vehicle will not knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934 any financial information concerning that Phipps Family Investment Vehicle for the purpose of knowingly enabling that broker or dealer to initiate any regular trading market in any interest in that Phipps Family Investment Vehicle.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3282 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18532; 811-4238]**

## Hercules Institutional Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Hercules Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On February 26, 1985, applicant filed a notification of registration pursuant to section 8(a) of the Act. On May 24, 1985, applicants filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had one shareholder immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-3371 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-18533; 811-4664]

## Hermes Institutional Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Hermes Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representation

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On May 7, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act. On July 28, 1986, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had three shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between an applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-3372 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-18534; 811-4152]

## Mercury Institutional Investments, Inc.; Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Mercury Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 9, 1984, an applicant filed a notification of registration pursuant to section 8(a) of the Act. On March 28, 1985, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statement pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the

basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had one shareholder immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3384 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18535; 811-4268]**

## Olympus Institutional Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Olympus Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On March 26, 1985, applicant filed a notification of registration pursuant to section 8(a) of the Act. On June 26, 1985, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had one shareholder immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3363 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18537; 811-4089]**

## Pegasus International Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Pegasus Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On August 10, 1984, applicant filed a notification of registration pursuant to section 8(a) of the Act. On September 21, 1984, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had four shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-3364 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-18536; 811-4918]

## Orion Institutional Investments, Inc.; Notice of Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Orion Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Application is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 25, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act. On February 23, 1987, applicants filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had two shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-3362 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-18538; 811-4128]

## Taurus Institutional Investments, Inc.; Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Taurus Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On October 15, 1984, applicant filed a notification of registration pursuant to section 8(a) of the Act. On February 28, 1985, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had two shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3365 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18539; 811-5352]**

## Vespucci Income Shares, Inc.; Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Vespucci Income Shares, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On October 1, 1987, applicant filed a notification of registration pursuant to section 8(a) of the Act. On December 24, 1987, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had four shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3366 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18540; 811-4941]**

## Zeus Institutional Investments, Inc.; Application

February 6, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Zeus Institutional Investments, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on January 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On December 18, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act. On March 20, 1987, applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

2. On September 4, 1991, applicant's board of directors approved a merger into Titan Institutional Investments, Inc. ("Titan") and recommended the merger be approved by shareholders. At a special meeting held on September 19, 1991, applicant's shareholders approved the merger.

3. On September 27, 1991, the outstanding shares of applicant were converted into shares of Titan on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Titan. Applicant had seventeen shareholders immediately prior to the merger.

4. Expenses incurred in connection with the merger totalled approximately $5,000, which were allocated between applicant and Titan on the basis of their relative net assets.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on September 27, 1991.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-3367 Filed 2-11-92; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 17-92-01]**

## Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of granting a Certificate of Alternative Compliance to a vessel.

**SUMMARY:** This notice provides notification of the granting of a Certificate of Alternative Compliance for an offshore supply vessel. The vessel cannot fully comply with certain provisions of Annex I of the 72 COLREGS without interfering with its operation.

**EFFECTIVE DATE:** December 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Richard Simonson, Seventeenth Coast Guard District, Marine Safety Division, P.O. Box 25517, Juneau, AK. 99802-5517. Telephone: (907) 467-2215, (FTS) 871-2215.

**SUPPLEMENTARY INFORMATION:** Under the provisions of section 1605(c) of title 33 United States Code, the Coast Guard publishes, in the **Federal Register** a listing of any vessel granted a Certificate of Alternative Compliance. A certificate is issued on a determination that a vessel cannot fully comply with the light, shape and sound signal provisions of the 72 COLREGS without interfering with the special function of the vessel and, instead meets alternative requirements.

The vessel listed below does not comply with Annex I, section 2(a)(i), 2(a)(ii), 2(g) and 3(a) of the 72 COLREGS in that its forward masthead light is mounted on top of the bridge cabin 8 meters above the hull and less than one meter above the side lights and the second mast (after) masthead light mounted on a mast 7.47 meters abaft of the forward masthead light at a height of 10 meters above the hull and 2 meters above the forward one. Full compliance would require the forward masthead light installed 12 meters above the hull, an after masthead light 4.5 meters higher than the forward masthead with the horizontal distance between them being not less than one half of the length of the vessel, with side lights placed at a height above the hull not greater than three quarters of that of the forward masthead light. Complying with these requirements would interfere with cargo transfer operations at platforms located

in Cook Inlet during high water periods when platform air gaps are less than required mast heights. Ice conditions and extreme tidal currents require the supply boats to either moor or remain underway, with the bow facing into the current and positioned under the platforms. Providing proper masthead heights and horizontal spacing would interfere with and limit cargo transfer operations to low tidal periods when the air gaps would allow sufficient clearance. Accordingly, the vessel has been issued a Certificate of Alternative Compliance, pursuant to Rule 1(e) of the 72 COLREGS.

M/V Lafayette, O.N. 592492.

Dated: December 16, 1991.

**D.E. Bodron,**

*Captain, U.S. Coast Guard, Chief, Marine Safety Division, Seventeenth Coast Guard District.*

[FR Doc. 92-3335 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

## Noise Exposure Map Notice

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Municipality of Anchorage, Alaska, for Merrill Field Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is January 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. James S. Perham, Airports Division, Planning and Programming Branch, Federal Aviation Administration, 222 W. 7th Avenue, Box 14, Anchorage, Alaska 99513.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Merrill Field Airport are in compliance with applicable requirements of part 150, effective January 13, 1992.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR's) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Municipality of Anchorage. The specific maps under consideration are NEM's 1988 and 1993 in the submission. The FAA has determined that these maps for Merrill Field Airport are in compliance with applicable requirements. This determination is effective on January 13, 1992. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Alaskan Region, 222 W. 7th Avenue, Box 14, Anchorage, Alaska 99513.

Mr. Joe C. Fouts, Manager, Merrill Field Airport, 800 Merrill Field Drive, Anchorage, Alaska 99501-4129.

Questions may be directed to the individual named above under the heading.

Issued in Alaskan Region, January 13, 1992.

**Russell S. Hathaway,**

*Manager, Airports Division, Alaskan Region.*

[FR Doc. 92-3318 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

## Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on March 10, 1992, at 9 a.m.

**ADDRESSES:** The meeting will be held in the L'Enfant Plaza Hotel, 490 E. Building, third floor, L'Enfant Plaza SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Etta Schelm, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on March 10, 1992, at the L'Enfant Plaza Hotel, 490 E. Building, third floor, L'Enfant Plaza SW., Washington, DC. The agenda for this meeting will include progress reports from the Airport Noise

Assessment Working Group, Fuel Requirements Working Group, Wet Leasing Working Group, Autopilot Engagement Requirements Working Group, and Controlled Rest on the Flight Deck Working Group. Each Working Group Chair will report on the progress of the working group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meetings or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on February 6, 1992.

**David S. Potter,**

*Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.*

[FR Doc. 92-3318 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

## Title XIII Standard Premium Insurance Policy; Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public that it is holding a public meeting for all interested parties on the revised title XIII draft premium "insurance policy". The meeting will provide for an exchange of public comments on the standard "insurance policy" in order to explore the range of practical parameters required to assure general industry acceptance.

**DATES:** The meeting will be held on February 27, 1992, at 10 a.m.

**ADDRESSES:** The meeting will be held at the facilities of Air Transport Association of America headquarters, 5th floor at 1709 New York Ave., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Requests for the draft "insurance policy" and any comments, observations, or questions you may have regarding it before the meeting may be directed to Douglas A. Thieman, at (202) 267-3315.

**SUPPLEMENTARY INFORMATION:** Under Title XIII of the Federal Aviation Act, 49 U.S.C. App. 1532, 1302, the Federal Aviation Administration (FAA) provides War Risk hull and liability insurance for commercial air carrier operations when commercial insurance cannot be obtained on reasonable terms. The experience gained during the Gulf war has amplified the need to have a standard FAA premium War Risk insurance policy which most carriers can consistently accept in full and maintain compliance with the insurance requirements of their lenders and lessors. The Office of Aviation Policy and Plans (APO) is developing such a standard "insurance policy" which will be completely independent of any "commercial policy" and provide coverage for any carrier within the scope of title XIII. The standard "insurance policy" shall provide reasonable and adequate alternate coverage during the emergencies for which the title XIII program is intended. The policy shall be flexible enough to accommodate title XIII premium and non-premium insurance issuances, and will also be used in conjunction with the Civil Reserve Air Fleet program. Copies of the draft "insurance policy" are available upon request.

**Paul A. Larson,**

*Acting Director, Office of Aviation Policy and Plans.*

[FR Doc. 92-3317 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-13-M

## National Highway Traffic Safety Administration

### Rulemaking, Research, and Enforcement Programs, Meeting

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

**DATES:** The Agency's regular, quarterly public meeting relating to the Agency's rulemaking, research, and enforcement programs will be held on March 26, 1992, beginning at 10:15 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by March 17, 1992, to the address shown below. If sufficient time is available, questions received after the March 17 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by March 17, 1992, and the issues to be discussed will be mailed to interested personnel by March 20, 1992, and will be available at the meeting.

**ADDRESSES:** Questions for the March 26 meeting relating to the agency's rulemaking, research, ad enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held at the Best Western Domino Farms Hotel, (Salons A & B), 3600 Plymouth Road, Ann Arbor, MI.

**SUPPLEMENTARY INFORMATION:** NHTSA will hold its regular, quarterly meeting to answer questions from the public and the related industries regarding the agency's rulemaking, research and enforcement programs, on March 26, 1992. The meeting will be held at the Best Western Domino Farms Hotel, (Salons A & B), 3600 Plymouth Road, Ann Arbor, MI. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

Issued: February 6, 1992.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 92-3284 Filed 2-11-92; 8:45 am]

BILLING CODE 4910-59-M

# DEPARTMENT OF THE TREASURY

## Fiscal Services

**[Dept. Circ. 570, 1991 Rev., Supp. No. 14]**

### Surety Companies Acceptable on Federal Bonds Atlantic Alliance Fidelity and Surety Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, on page 30134 to reflect this addition:

Atlantic Alliance Fidelity and Surety Company. Business Address: P.O. Box 985, Cherry Hill, New Jersey 08003.

Underwriting Limitation b/: $180,000.
Surety Licenses c/: DE, NJ, and PA.
Incorporated In: New Jersey. Federal Process Agents d/.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Fund Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6850.

Dated: February 4, 1992.

**Charles F. Schwan III,**

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 92-3325 Filed 2-11-92; 8:45 am]

BILLING CODE 4810-35-M

## UNITED STATES INFORMATION AGENCY

### Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on February 14, 1992, in the Executive Conference Room of the Cudjoe Key Air Force Base, Cudjoe Key, Florida. Below is the intended agenda.

**Friday, February 14, 1992**

*Agenda*

Part One—Closed to the Public

1 p.m.

1. TV Marti Technical Adjustments.
2. Radio Marti Technical Adjustments.

Part Two—Open to the Public

2:30 p.m.

3. Recommendations by the President's Task Force on U.S. Government International Broadcasting.
4. New Programming on Radio Marti.
5. Office of Cuba Broadcasting Budget.
6. Cuba's Internal Opposition.
7. Public Testimony.

Items one and two, which will be discussed from 1 p.m. to 2:30 p.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact James Skinner at (202) 401-7312 to make prior arrangements since access to the Cudjoe Key facility is strictly controlled.

Dated: February 6, 1992.

**Henry E. Catto,**

*Director.*

[FR Doc. 92-3345 Filed 2-11-92; 8:45 am]

BILLING CODE 8230-01-M

### Advisory Commission on Public Diplomacy; Meeting

**AGENCY:** United States Information Agency.

**ACTION:** Notice.

**SUMMARY:** A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on February 12 in room 600, 301 4th Street, SW., Washington, DC from 9:45-10:30 a.m. and from 12-12:30 p.m.

At 9:45 a.m. the Commission will meet with Mr. Bruce Koch, Acting Director, Office of European Affairs, USIA, to discuss public diplomacy in Eastern Europe and the independent republics of the former Soviet Union. At 12 p.m. the Commission will meet with Mr. Stanley Silverman, USIA Comptroller, to discuss the Agency's FY 1993 budget.

**FOR FURTHER INFORMATION CONTACT:** Please call Gloria Kalamets (202) 619-4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: February 6, 1992.

**Rose Royal,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 92-3244 Filed 2-11-92; 8:45 am]

BILLING CODE 8230-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Advisory Committee on Environmental Hazards; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Veterans' Advisory Committee on Environmental Hazards has been renewed for a 2-year period beginning January 23, 1992, through January 23, 1994.

Dated: January 30, 1992.

By direction of the Secretary:

**Diane H. Landis,**

*Committee Management Officer.*

[FR Doc. 92-3290 Filed 2-11-92; 8:45 am]

BILLING CODE 8320-01-M

### Merit Review Boards; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Department of Veterans Affairs 14 Merit Review Review Boards have been renewed for a 2-year period beginning January 31, 1992, through January 31, 1994.

Dated: February 3, 1992.

By direction of the Secretary.

**Diane H. Landis,**

*Committee Management Officer.*

[FR Doc. 92-3291 Filed 2-11-92; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 29
Wednesday, February 12, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FARM CREDIT ADMINISTRATION**

Farm Credit Administration Board; Regular Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held February 13, 1992, at the offices of the Farm Credit Administration in McLean, Virginia, from 10:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Curtis M. Anderson, Secretary of the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

*B. New Business*

1. 90-Day Regulatory Review
2. Regulations
   a. Expansion of Privacy Act Exemptions to Inspector General Investigatory Files—Amendment of 12 CFR 603.355 (Proposed)
3. Supervision of the Office of Secondary Market
4. National Consumer Cooperative Bank

**Closed Session***

*A. New Business*

1. Other Prior Approval
   a. Bakersfield PCA and FLBA Financial Assistance to Facilitate Merger for Northwest North Dakota, ACA
2. Enforcement Actions

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: February 7, 1992.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 92–3445 Filed 2–10–92; 9:19 am]

BILLING CODE 6705–01–M

**NATIONAL CREDIT UNION ADMINISTRATION**

Notice of Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, February 18, 1992.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Closed Meeting.
2. Application for Agent Membership in the Central Liquidity Facility. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Insurance Appeal. Closed pursuant to exemptions (6), (8), and (9)(B).
4. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 92–3528 Filed 2–10–92; 3:00 pm]

BILLING CODE 7535–01–M

# Corrections

Federal Register
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 75

[Docket No. 88-173]

### Communicable Diseases in Horses, Asses, Ponies, Mules, and Zebras

*Correction*

In rule document 92-1521 beginning on page 2439 in the issue of Wednesday, January 22, 1992, make the following correction:

### PART 75-[CORRECTED]

On page 2440, in the second column, in the authority, in the first line, "113m" should read "113."

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 105

[Docket No. 90-170]

### Viruses, Serums, Toxins, and Analogous Products

*Correction*

In rule document 91-30343 beginning on page 66782, in the issue of Thursday, December 26, 1991, make the following correction:

### PART 105—[CORRECTED]

On page 66783, in the second column, under amendatory item 16., in the authority, in the second line, "2.15" should read "2.51".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM92-2-7-000]

### Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

*Correction*

In notice document 91-23011 appearing on page 48550 in the issue of Wednesday, September 25, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-23010" should read "FR Doc. 91-23011".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. TA92-2-82-000 and TM92-2-82-000]

### Viking Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

*Correction*

In notice document 91-23013 beginning on page 48551 in the issue of Wednesday, September 25, 1991, make the following correction:

On page 48552, in the first column, in the file line at the end of the document, "FR Doc. 91-23012" should read "FR Doc. 91-23013".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-34017;FRL 3935-5]

### Intent to Remove Certain Active Ingredients From Reregistration List D and to Cancel Pesticides Containing Those Ingredients

*Correction*

In notice document 91-23710 beginning on page 50422 in the issue of Friday, October 4, 1991, make the following correction:

On page 50432, in the third column, in the file line at the end of the document, "FR Doc. 91-23968" should read "FR Doc. 91-23710".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

[Docket No. 86N-0451]

### New Animal Drugs for Use in Animal Feeds; Removal of Regulation

*Correction*

In rule document 92-1020 beginning on page 1641 in the issue of Wednesday, January 15, 1992, make the following corrections:

On page 1642, in the first column, in the second line, "RFS" should read "Refs." In the 13th line, after "preamble" insert "to".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 720

[Docket No. 89P-0180]

### Modification in Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements

*Correction*

In rule document 92-1989 beginning on page 3128 in the issue of Tuesday, January 28, 1992, make the following correction:

On page 3130, in the first column, above amendatory instruction 5., the heading should read:

§ 720.5 [Removed and Reserved]

BILLING CODE 1505-01-D

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3160**

**[WO-610-4111-02 24 1A; Circular No. 2630]**

**RIN 1004-AA 67**

## Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

*Correction*

In rule document 92-1336, appearing on page 2039, in the issue of Friday, January 17, 1992, in the second column, in paragraph 1., in the fourth line, "May 21, 1990" should read "May 21, 1930".

BILLING CODE 1505-01-D

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Public Land Order 6919**

**[CO-930-4214-10; COC-06298]**

## Partial Revocation of Public Land Order 1825; Colorado

*Correction*

In rule document 92-1771 beginning on page 2841 in the issue of Friday, January 24, 1992, make the following correction:

On page 4842, in the first column, in the second line of the land description, "Sec. 28" should read "Sec. 18".

BILLING CODE 1505-01-D

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## Part II

# Department of the Interior

Bureau of Indian Affairs

## Reinstatement to Former Status for the Guidiville Band of Pomo Indians, the Scotts Valley Band of Pomo Indians and Lytton Indian Community of CA; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Notice of Reinstatement to Former Status for the Guidiville Band of Pomo Indians, the Scotts Valley Band of Pomo Indians and Lytton Indian Community of CA

**AGENCY:** Bureau of Indian Affairs.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Federal government has settled litigation reinstating the status and rights of three California Indian rancherias with which the Federal government had terminated its relationship. Effective September 6, 1991, the Indians of the Guidiville Band of Pomo Indians, the Scotts Valley Band of Pomo Indians and Lytton Indian Community of California, were reinstated to the status they had before termination. Each of the groups and their members are eligible for all rights and benefits extended to other federally recognized Indian tribes and their members.

**DATES:** Effective September 6, 1991.

**ADDRESSES:** All three groups are under the operational jurisdiction of the Superintendent, Central California Agency, Bureau of Indian Affairs, 1824 Tribute Road, suite J, Sacramento, CA 95815–4308, telephone (916) 978–4337; and the Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825–1884, telephone (916) 978–4691.

**FOR FURTHER INFORMATION CONTACT:** Harold M. Brafford, Superintendent, Central California Agency, or Ronald Jaeger, Director, Sacramento Area Office, at the addresses listed above; or William Wirtz, Esq., Office of the Regional Solicitor, Pacific Southwest Region, 2800 Cottage Way, room E–2753, Sacramento, CA 95825–1890, telephone (916) 978–4824; or Scott Keep, Assistant Solicitor, Branch of Tribal Government & Alaska, Division of Indian Affairs, Office of the Solicitor, Mail Stop 6556. U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–5134.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority in the Act of August 18, 1958, P.L. 85–671, 72 Stat. 619, as amended by the Act of August 11, 1964, Public Law 88–419, 78 Stat. 390 ("the Rancheria Act"), the Federal government terminated its relationship with many California Indian rancherias, including those for the Indians of the Guidiville Band of Pomo Indians, the Scotts Valley Band of Pomo Indians and Lytton Indian Community of California, and distributed the assets of the rancherias pursuant to plans adopted by the Indians. The Indians of these three rancherias and the Mechoopda Indians of the Chico Rancheria, brought suit against the United States alleging that the termination was unlawfully done because the United States had not taken all actions required by the Rancheria Act prior to the purported termination. They sought reinstatement of the status they had individually and collectively enjoyed prior to the termination and certain other relief. A settlement of the litigation was negotiated which recognizes that the distributes of the rancheria assets are eligible for all rights and benefits extended to Indians under Federal law and that the tribes or communities of the rancherias and their members.

*Indians of the Sugar Bowl Rancheria, et al.* v. *United States*, No. C–86–3660 WWS, N. D. California.

Dated: February 6, 1992.

**Eddie F. Brown,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 92–3357 Filed 2–11–92; 8:45 am]

BILLING CODE 4310–02–M

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# Part III

# Department of Health and Human Services

## Administration on Aging

## Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

[Program Announcement 13655.911]

### Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

**AGENCY:** Administration on Aging (AoA), OS, HHS.

**ACTION:** Announcement of availability of funds and opportunity to apply under the Older Americans Act, title VI, Grants for Native Americans, part A—Indian Program.

**SUMMARY:** The Administration on Aging will accept applications for funding in Fiscal Year 1992 under the Older Americans Act, title VI, Grants for Native Americans, part A—Indian Program, from eligible federally recognized Indian tribal organizations that are not now participating in title VI, all current title VI, part A grantees and current grantees who wish to leave a consortium and apply as a new grantee. Successful applications from new grantees will be funded if funds permit.

**DATES:** There will only be a 30 day turnaround time for this application and the application will be due March 13, 1992.

**ADDRESSES:** See Appendix A.

**FOR FURTHER INFORMATION CONTACT:** M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, room 4752, 330 Independence Avenue, SW., Washington, DC 20201, telephone (202) 619-2957.

**SUPPLEMENTARY INFORMATION:**

#### 1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created a new title, title VI, Grants for Indian Tribal Organizations. The purpose of this title is to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older Americans Act. (title III of the Older Americans Act, entitled "Grants for State and Community Programs on Aging" is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs—was added.

Nutritional services and information and referral services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportation, chore services, and other supportive services which contribute to the welfare of older Native Americans.

#### 2. Eligibility of an Indian Tribal Organization or Indian Tribe to Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: "(1) The tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services." For purposes of title VI, part A, the terms "Indian tribe" and "tribal organization" have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns all federally recognized Indian tribal organizations, those currently participating in title VI, part A individually or as members of a consortium and those that are not currently participating in title VI, part A.

#### 3. Available Funds

Funds have been appropriated for Fiscal Year 1992. Funds will be awarded to tribal organizations applying under this announcement based on a formula which considers the number of eligible applicant tribal organizations, and the number of elders over age 60 in each tribal organization's proposed title VI service area. The amounts awarded included funds for both direct and indirect costs. Therefore, since funds are limited by a Tribe's annual allotment, Tribal grantees must carefully plan their programs and consider all costs. No additional funds will be available.

Applications from current grantees who are a part of a consortium and wish to leave the consortium will be treated as new grant applications. Successful applications from new grantees will be funded pending availability of additional funds.

Information on grant levels in Fiscal Year 1991 is given below as a guide to possible funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

| Population range (number of older Indians age 60 years and over, represented by the tribal organization) | Amounts of awards in FY 1991 |
|---|---|
| 50 to 100 | $45,682 |
| 101 to 200 | 53,693 |
| 201 to 300 | 62,115 |
| 301 to 400 | 70,537 |
| 401 to 500 | 78,959 |
| 501+ | 87,381 |

#### 4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for project period April 1, 1992—March 31, 1993, as described in section 5 below, "Content of the Application." One signed original and one copy of the application including all attachments, must be submitted to the Regional Program Director, Administration on Aging Regional Office of the Department of Health and Human Services. (See appendix)

#### 5. Content of the Application

The application must meet the criteria in sections 614 (a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. No standard Federal forms are required. The application must include the following information:

*A. Objectives and Need for Assistance*

This section must include objectives, expressed in measurable terms, which are related to the needs of the service population.

*B. Results or Benefits Expected*

The application should describe the results or benefits expected from each service proposed.

*C. Approach*

(1) Description and Method of Delivery of Each Service

(a) *Nutrition.* Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the approximate number of persons to be served. Nutrition services must be substantially in compliance with the provisions of

part C of title III. If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) *Information and referral.* Information and referral services are required. They must be available for older Indians living in the title VI part A service area and there should be a description of how they will be provided. The approximate number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and referral services, the application must state how such services are provided in other ways, and how they are financed.

(c) *Other supportive services.* The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as "Supportive Services."

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is a part of "Supportive Services."

(d) *Coordination with title III.* The application should provide a description of how title VI and title III resources are to be coordinated within the title VI service area.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

*D. Geographic Location*

The application must include a narrative description of the title VI, part A service area, and a map. The area to be served by title VI, part A must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by title III.

*E. Additional Information*

(1) Older Indians in the Title VI, Part A Service Area

The law requires that, to be eligible for title VI funding, a tribal organization must represent at least 50 persons aged 60 years or over. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The amount of the grant is based on this number of persons aged 60 years or over. As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an "older Indian" for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of "older Indian" for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a consortium must use the same age for "older Indian."

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit a copy of the Tribal council resolution authorizing participation in title VI, part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is required from each participating Tribe, specifically authorizing representation for the purpose of title VI, part A of the Older Americans Act.

(3) Program Assurances

Title VI, part A Program Assurances must be included in the application. The title VI, part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988 (see appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire period being applied for (Fiscal Year 1992).

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. See addresses and telephone number in section 4 above, "Application Process."

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applications must identify both the principal official of the tribal organization, and the proposed title VI program director: Name, Title, Address including Zip Code, Telephone number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the applicant must list the federally recognized tribes which are included. A copy of each tribal resolution must be enclosed.

6. Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before March 13, 1992. (Applicants are cautioned to request a legibly dated U.S. Postal service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

(Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.)

Dated: February 5, 1992.

**Joyce T. Berry,**

*U.S. Commissioner on Aging.*

## Appendix A

Regional Offices

Region I (CT, MA, ME, NH, RI, VT), Thomas Hooker, RPD, John F. Kennedy Building, room 501, Boston, Massachusetts 02203, (617) 565-1158, FAX (617) 565-1111.

Region II (NY, NJ, PR, VI), Judith Rackmill, RPD, 26 Federal Plaza, room 4149, Broadway and Worth Streets, New York, New York 10278, (212) 264-2976, FAX (212) 264-4826.

Region III (DC, MD, VA, DE, PA, WV), Paul E. Ertel, Jr., RPD, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6891, FAX (215) 596-5028.

Region IV (AL, FL, MS, SC, TN, NC, KY, GA), Frank Nicholson, RPD, 101 Marietta Tower, suite 903, Atlanta, Georgia 30323, (404) 331-5900, FAX (404) 730-3386.

Region V (IL, IN, MI, MN, OH, WI), Eli Lipschultz, RPD, 105 West Adams Street, 21st Floor, Chicago, Illinois 60603, (312) 353-3141, FAX (312) 353-2629.

Region VI (AR, LA, OK, NM, TX), John Diaz, RPD, 1200 Main Tower Building, room 1000, Dallas, Texas 75202, (214) 767-2971, FAX (214) 767-4537.

Region VII (IA, KS, MO, NE), William Weisent, Acting RPD, 601 East 12th Street, room 384, Kansas City, Missouri 64106, (816) 426-2955, FAX (816) 426-2888.

Region VIII (CO, MT, UT, WY, ND, SD), Larry A. Brewster, Ph.D., RPD, 1961 Stout Street, room 1185, Federal Office Building, Denver, Colorado 80294, (303) 844-2951, FAX (303) 844-3642.

Region IX (CA, NV, AZ, HI, GU, TTPI, CNMI, AS), Howard Williams, Acting RPD, 50 United Nations Plaza, room 480, San Francisco, California 94102, (415) 556-6003, FAX (415) 556-4161.

Region X (AK, ID, OR, WA), Chisato Kawabori, RPD, Blanchard Plaza, RX-33; room 600, 2201 Sixth Avenue, Seattle, Washington 98121, (206) 553-5341, FAX (206) 553-6790.

## Appendix B

The Older Americans Act, section 614(a)—provides that no grant may be made under this part unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organizations;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and referral services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full- or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contract with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provision of sections 307(a)(14)(A) (i) and (iii), 307 (a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1326.19, paragraph (d) requires that the application shall provide for assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through § 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act

BILLING CODE 4130-01-M

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

BILLING CODE 4130-01-C

**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 take 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 government wide 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 U.S.C. 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 each 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 or 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, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (Use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630 (c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for State-Wide and State Agency-Wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Signature _____

Date _____

Title _____

Organization_____

DGMO Form #2 Revised May 1990

**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.

[FR Doc. 92-3151 Filed 2-11-92; 8:45 am]

BILLING CODE 4130-01-M

federal register

Wednesday
February 12, 1992

# Part IV

# The President

## Executive Order 12789—Delegation of Reporting Functions Under the Immigration Reform and Control Act of 1986

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# Presidential Documents

Title 3—

The President

Executive Order 12789 of February 10, 1992

## Delegation of Reporting Functions Under the Immigration Reform and Control Act of 1986

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and title IV of the Immigration Reform and Control Act of 1986, Public Law 99–603 ("Reform Act"), it is hereby ordered as follows:

**Section 1.** The Attorney General shall: (a) perform, in coordination with the Secretary of Labor, the functions vested in the President by section 401 of the Reform Act (8 U.S.C. 1364);

(b) perform, except for the functions in section 402(3)(A), the functions vested in the President by section 402 of the Reform Act (8 U.S.C. 1324a note); and

(c) perform, insofar as they relate to the initial report described in section 404(b), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

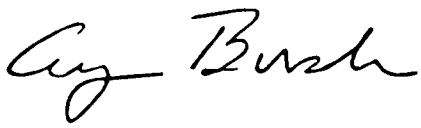
**Sec. 2.** The Secretary of Labor shall: (a) perform the functions vested in the President by section 402(3)(A) of the Reform Act (8 U.S.C. 1324a note);

(b) perform the functions vested in the President by section 403 of the Reform Act (8 U.S.C. 1188 note); and

(c) perform, insofar as they relate to the second report described in section 404(c), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

**Sec. 3.** The functions delegated by sections 1 and 2 of this order shall be performed in accordance with the procedures set forth in OMB Circular A–19.

**Sec. 4.** This order shall be effective immediately.



THE WHITE HOUSE,
*February 10, 1992.*

[FR Doc. 92–3602
Filed 2–11–92; 11:30 am]
Billing code 3195–01–M

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**H.R. 4095/P.L. 102-244**

To increase the number of weeks for which benefits are payable under the Emergency Unemployment Compensation Act of 1991, and for other purposes. (Feb. 7, 1992; 106 Stat. 3; 4 pages) Price: $1.00