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# federal register

Monday
August 25, 1997

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 56

### Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs

*CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 53 to 209, revised as of January 1, 1997, § 56.36 is corrected by revising the last sentence of paragraphs (a)(2) and (b)(2) to read as follows:

**§ 56.36 Information required on and form of grademark.**

* * * * *

(a) * * *

(2) * * * The size or weight class of the product may be omitted from the grademark, provided, it appears prominently on the main panel of the carton.

* * * * *

(b) * * *

(2) * * * The grademark shall be printed on the carton.

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. FV97-930-5 IFR]**

### Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Issuance of Grower Diversion Certificates

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes terms and conditions for the issuance of grower diversion certificates by the Cherry Industry Administrative Board (Board) under the newly promulgated marketing order for tart cherries. In the event volume regulations are issued by the Secretary for the 1997 crop year, handlers could use such certificates in order to satisfy their restricted percentage amounts. Tart cherries handlers in Oregon, Pennsylvania, Washington and Wisconsin (Districts 5, 6, 8, and 9) would not be subject to volume regulation, if implemented, because these districts do not currently produce adequate tonnage to trigger such regulation under the order.

**DATES:** Effective August 26, 1997; comments received by September 24, 1997, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, preliminary free and restricted percentages have been established for tart cherries acquired by handlers during the 1997 crop year, July 1, 1997, through June 30, 1998. Final free and restricted percentages may be established at a later date. This rule authorizes the issuance of diversion certificates to growers for cherries diverted during the 1997 crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule provides for the issuance of diversion certificates to growers in volume regulated districts under the tart cherry marketing order for the 1997 crop year. The order became effective September 25, 1996, and the initial Cherry Industry Administrative Board was appointed in December 1996. The Board held several meetings in January, February, March and June 1997, to consider its start-up costs and establish rules and regulations to implement the order authorities. At its meetings, the Board unanimously recommended that

the regulations be forwarded to the Department for appropriate action.

In discussions concerning volume regulations for the 1997 crop year, the Board considered guidelines and procedures for grower diversion. Growers in the States which would be subject to volume regulation were sent information about diversion and were notified that participation in a diversion program would be completely voluntary. A majority of the growers (approximately 700 out of 1,220) in the districts which would be subject to volume regulation if it were imposed have been diverting their cherries this season based on preliminary free and restricted percentage figures announced by the Board. The Board, in its meetings, continued its review of applicable sections of the order, such as those pertaining to optimum supply, and making recommendations to specify guidelines for grower diversion.

The order in § 930.50 provides the method of establishing an optimum supply level of cherries for the crop year. The optimum supply consists of a free percentage amount which a handler could sell to any market and a restricted percentage amount, when warranted, which would have to be withheld from the market. Preliminary percentages were established by the Board on July 2, pursuant to § 930.50(b) of the order, using Department estimates of the upcoming crop. Preliminary free and restricted percentages of 66 and 34 percent, respectively, were announced to the industry in accordance with § 930.50(h) of the order. No later than September 15, after harvest and processing of the crop have been completed, the Board is required to compute, and recommend to the Secretary, final percentages based on actual crop amounts. A handler can satisfy restricted percentage obligations established by regulation by holding restricted percentage cherries in an inventory reserve that the handler maintains, by redeeming grower diversion certificates, or by diverting cherries.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Growers would receive diversion certificates from the Board stating the weight of cherries diverted. The grower could then present this certificate to a handler in lieu of actual cherries. The handler could apply the weight of cherries represented by the certificate against the handler's restricted percentage amount.

The Board recommended rules and regulations specifying the guidelines for the grower diversion program. First, the Board recommended that any grower desiring to divert in the orchard should first apply to the Board. The application should include the name, address, phone number and a statement signed by the grower agreeing to abide by all the rules and regulations for diversion. In addition, the grower would provide maps of such grower's orchard.

The Board recommended two types of in-orchard diversion. These are random row diversion, in which orchard rows are randomly chosen by the Board, using a computer program, to be left unharvested, and whole block diversion, in which a whole definable orchard block is left unharvested. Trees six years old or younger would not qualify for diversion, since these trees are not yet in full production.

The Board recommended that all grower diversion certificates should be redeemed with handlers by November 1. After November 1, grower diversion certificates would not be valid. It was intended that diversion certificates be used within the same crop year that they were issued, as if a crop had been produced. The November 1 date would allow handlers adequate time to meet their restricted percentage amounts after final percentages have been established.

The Board also recommended guidelines concerning random and whole block diversion and compliance procedures for growers to follow under the grower diversion program.

This crop year a majority of growers are voluntarily diverting cherries based on preliminary free and restricted percentages which have been established by the Board and on recommendations and guidance concerning diversion which the Board has developed, and will be requesting diversion certificates from the Board. This rule provides for the issuance of such certificates subject to certain specified terms and conditions. In order to receive a certificate, a grower must show, to the satisfaction of the Board, that cherries were in fact diverted. This may be accomplished in a number of ways. The Board needs information about the grower's production. In addition, the grower must agree to allow the Board to confirm reported diversion figures by allowing a Board compliance officer to visit the grower's orchard to determine whether rows or trees selected for diversion have not been harvested.

Once the Board has obtained the necessary information concerning diversion by a grower, it will issue a diversion certificate. The diversion certificate would be issued for an amount equal to the estimated volume of cherries diverted by the grower.

For random row diversion, such estimated volume would be calculated by applying the percentage of the grower's production diverted to the actual average volume per acre of cherries produced and harvested. For example, Grower A farms 1,000 acres and elects to divert 20 percent of the harvestable acreage (200 acres). The grower harvests the remaining 800 acres and obtains 6,400,000 pounds of cherries, which represents a yield per acre of 8,000 pounds. Such grower would receive a diversion certificate for 1,600,000 pounds of cherries (8,000 lbs multiplied by the 20 percent of the total acreage diverted; in this instance, 200 acres).

For whole block diversion, the weight of a harvested sample of 5 percent of each block, provided by the grower, would be used to calculate the total volume of diverted cherries to be credited on the diversion certificate. For example, Grower B farms 1,000 acres and elects to whole block divert a 200 acre block. If the 5 percent of the harvested trees in the block diverted yield 80,000 pounds of cherries, the grower would receive a diversion certificate for 1,600,000 pounds (80,000 pounds divided by 5 percent (.05) yields 1,600,000 pounds). The rest of the block would remain unharvested.

After receiving a certificate from the Board, the grower could present the certificate to a handler to be redeemed. Based upon the recommendations of the Board, guidelines and procedures for grower diversion for 1998 and subsequent seasons will be established later through another rulemaking action.

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

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 1,220 producers or growers of tart cherries in the regulated

area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

Section 930.58(b) authorizes the Board to issue diversion certificates to growers in volume regulated districts under the tart cherry marketing order if cherries are diverted according to terms and conditions specified in the order, or according to such other terms and conditions that the Board, with the approval of the Secretary, may establish. The tart cherry marketing order was recently promulgated and the Board met several times in 1997 to recommend rules and regulations to implement the order authorities. The Board is required under the order to review its marketing policy on or before July 1 and then make recommendations to the Secretary for volume regulation, if such regulation is deemed necessary.

The impact of this rule would be beneficial to growers. Grower diversion is one of the methods under the order that a handler can utilize to meet any such handler's restricted percentage. For example, growers may voluntarily choose to divert because they have an abundance of low value, poor quality cherries or because they are unable to find a processor willing to process some or all of their cherries. Before choosing to divert, the grower would most likely evaluate the harvesting and other cultural costs that could be saved by diverting and locate a handler that would be willing to redeem such grower's diversion certificate.

The Board discussed alternatives to its recommendation to issue grower diversion certificates for the 1997 crop year. The Board considered not issuing grower diversion certificates for the 1997 crop year but believed this action was needed.

The Board also discussed limiting the blocks to be diverted to no less than 5 acre blocks, but felt that this could have an adverse impact on small growers that produce on less than 5 acre blocks. Therefore, the Board recommended not to restrict the size of orchard blocks which could be diverted.

This rule will not impose any reporting or recordkeeping requirements on either small or large tart cherry growers or handlers in addition to those already considered or approved during the order promulgation proceeding. The only written information requested from a grower for 1997 is an orchard map and the grower's final production volume. Since growers maintain this information as part of their normal farming operations, it takes approximately 10 minutes to prepare a map and less than a minute to total the final production volume. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meetings and participate in Board deliberations. All Board meetings were open to the public and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This interim final invites comments on grower diversion. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The marketing order has been recently promulgated and the rule needs to be implemented as soon as possible since, based on announced preliminary percentages, volume regulation may be recommended for the 1997 crop year; (2) the 1997 crop year for cherries is from July 1, 1997, through June 30, 1998; (3) over 700 growers participating in a diversion program and have been voluntarily diverting cherries based on preliminary free and restricted percentages announced by the Board; and, (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In part 930, a new § 930.100 is added to read as follows:

**§ 930.100 Grower diversion certificates.**

(a) In accordance with paragraph (b) of this section, the Board may, for the 1997 crop year, issue diversion certificates to growers, in districts subject to volume regulation (Northwest Michigan, Central Michigan, New York, and Utah) who have voluntarily elected to divert in the orchard all or a portion of their 1997 tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries. Handlers may redeem diversion certificates with the Board through November 1 of the 1997 crop year. After November 1 of the 1997 crop year that crop year's grower diversion certificates are no longer valid.

(b) *Terms and conditions.* To be eligible to receive diversion credit, growers voluntarily choosing to divert cherries must meet the following terms and conditions:

(1) In order to receive a certificate, a grower must demonstrate, to the satisfaction of the Board, that rows or trees which were selected for diversion were not harvested. Trees six years old or younger do not qualify for diversion.

(2) The grower must furnish the Board with a total harvested production amount so the Board can calculate the amount of grower diversion tonnage to

be placed on the diversion certificate. The Board will confirm the grower's production amount with information provided by handlers (to which the grower delivers cherries) on Board Form Number Two.

(3) The grower must agree to allow a Board compliance officer to visit the grower's orchard to confirm that diversion has actually taken place.

(c) *Calculation of diversion amounts.* The weight of cherries diverted and left unharvested shall be calculated by the Board after growers furnish the Board with the necessary information concerning their production. After verification of the volume of cherries diverted, the Board shall calculate the amounts of grower diversion tonnage to be placed on the diversion certificates and issue such certificates to growers. Such amounts shall be determined as follows:

(1) For whole block diversion, the weight of a harvested sample of 5 percent of each diverted block, provided by the grower, will be used to calculate the total volume of diverted cherries to be credited on the diversion certificate. For example, a grower farms 1,000 acres and elects to whole block divert a 200 acre block. If 5 percent of the harvested trees in the block diverted yield 80,000 pounds of cherries, the grower would receive a diversion certificate for 1,600,000 pounds (80,000 pounds divided by 5 percent (.05) yields 1,600,000 pounds). The rest of the block would remain unharvested.

(2) For random row diversion, such estimated volume would be calculated by applying the percentage of the grower's production diverted to the actual average volume per acre of cherries produced and harvested. For example, a grower farms 1,000 acres and elects to divert 20 percent of the harvestable acreage (200 acres). The grower harvests the remaining 800 acres and obtains 6,400,000 pounds of cherries, which represents a yield per acre of 8,000 pounds. Such grower would receive a diversion certificate for 1,600,000 pounds of cherries (8,000 lbs multiplied by the 20 percent of the total acreage diverted; in this instance, 200 acres).

Dated: August 18, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97–22578 Filed 8–20–97; 4:06 pm]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 931

[Docket No. FV97–931–2 IFR]

## Fresh Bartlett Pears Grown in Oregon and Washington; Reduced Assessment Rate

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule decreases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period for this marketing order covers the period July 1 through May 31. The assessment rate will continue until amended, suspended, or terminated.

**DATES:** Effective on August 26, 1997. Comments received by September 24, 1997, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** *Teresa L. Hutchinson*, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440 or *George J. Kelhart*, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Telephone:* (202) 690–3919, *Fax:* (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting *Jay Guerber*, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Telephone:* (202) 720–2491, *Fax:* (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 141 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.0375 to $0.03 per standard box.

The fresh Bartlett pear marketing order provides authority for the

Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 29, 1997, and unanimously recommended 1997–98 expenditures of $111,441 and an assessment rate of $0.03 per standard box of fresh Bartlett pears. In comparison, last year's budgeted expenditures were $89,774. The assessment rate of $0.03 is $0.0075 less than the rate currently in effect. At the current rate of $0.0375 per standard box and an estimated 1997 fresh Bartlett pear production of 3,150,000 standard boxes, the projected reserve on May 31, 1998, would exceed the level the Committee believed to be adequate to administer the program. The Committee discussed lower assessment rates, but decided that an assessment rate of less than $0.03 would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Committee for the 1997–98 fiscal period include $48,454 for salaries, $8,187 for office rent, and $4,956 for health insurance. Budgeted expenses for these items in 1996–97 were $46,306, $7,016, and $4,991, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. With fresh Bartlett pear shipments for the year estimated at 3,150,000 standard boxes, the $0.03 per standard box assessment rate should provide $94,500 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $111,441 and an assessment rate of $0.03 per standard box of fresh Bartlett pears. The assessment rate of $0.03 is $0.0075 less than the rate currently in effect. At the current assessment rate of $0.0375 per standard box, the Committee's reserve was projected to exceed the level the Committee believed to be adequate to administer the program. Therefore, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Committee for the 1997–98 fiscal period include $48,454 for salaries, $8,187 for office rent, and $4,956 for health insurance. Budgeted expenses for these items in 1996–97 were $46,306, $7,016, and $4,991, respectively.

Fresh Bartlett pear shipments for the year are estimated at 3,150,000 standard boxes, which should provide $94,500 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $5.79 and $12.72 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 0.24 and 0.52 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally,

interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for fresh Bartlett pears; (2) the 1997–98 fiscal period began on July 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 931**

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

## PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 931.231 [Amended]**

2. Section 931.231 is amended by removing the words "July 1, 1996," and adding in their place the words "July 1, 1997," and by removing "$0.0375" and adding in its place "$0.03."

Dated: August 19, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97–22522 Filed 8–22–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–ANE–32–AD; Amendment 39–10107; AD 97–17–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada PW100 series turboprop engines. This action requires a visual inspection of the two gas generator case drain ports to ensure that they are connected to drain lines or capped in accordance with the applicable aircraft installation configuration. This amendment is prompted by a report of a nacelle fire. The actions specified in this AD are intended to prevent a nacelle fire caused by fluid leaking from the gas generator case drain ports.

**DATES:** Effective September 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1997.

Comments for inclusion in the Rules Docket must be received on or before October 24, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ad–engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1; telephone (514) 647–2866, fax (514) 647–2888. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** *Diane Cook*, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate,12 New England Executive Park, Burlington, MA 01803–5299; *telephone* (617) 238–7134, *fax* (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** Transport Canada, which is the airworthiness authority for Canada, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Pratt & Whitney Canada (PWC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, and PW127F series turboprop engines. The FAA and Transport Canada received a report of an Embraer EMB–120 aircraft powered by PWC PW118B turboprop engines that recently experienced a fire shortly after take off. The aircraft landed safely with the loss of both hydraulic systems and with extensive heat and fire damage to the right engine nacelle, wing, and landing gear bay. A portion of the aircraft exhaust duct was also missing. The fuel and ignition sources have not been determined and the investigation of the accident by the National Transportation Safety Board (NTSB) is continuing. As part of the investigation, the right engine was disassembled and the investigators found the gas generator case rear drain port was not capped as required by the aircraft manufacturer's installation instructions. A subsequent inspection of the operator's EMB 120 fleet found two more aircraft with the cap missing from the gas generator case rear drain port. Under certain conditions, the opened rear drain port may permit fluid to exit through the port and accumulate in the nacelle resulting in a possible hazardous situation. All PW100 model engines are equipped with two gas generator case drain ports. This condition, if not corrected, can result in a nacelle fire caused by fluid leaking from the gas generator case drain ports.

PWC has issued Service Information Letter SIL No. PW100–003, issued June 18, 1997, that describes procedures for

a visual inspection of the two gas generator case drain ports to ensure that they are connected to drain lines or capped in accordance with the applicable aircraft installation configuration.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, 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 engines of the same type design registered in the United States, the proposed AD would require a visual inspection of the two gas generator case drain ports to ensure that they are connected to drain lines or capped in accordance with the applicable aircraft installation configuration. The actions would be required to be accomplished in accordance with the SIL described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–32–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§39.13 [Amended]**

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

**97–17–05 Pratt & Whitney Canada:** Amendment 39–10107. Docket 97–ANE–32–AD.

*Applicability:* Pratt & Whitney Canada (PWC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, and PW127F series turboprop engines installed on but not limited to Dornier 328, Fokker 50, Jetstream ATP, ATR42, ATR42–500, ATR72, Embraer EMB–120, and Dehaviland Dash–8–100/–200/–300/–315 engines.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a nacelle fire caused by fluid leaking from the gas generator case drain ports, accomplish the following:

(a) Within 10 hours time in service after the effective date of this AD, visually inspect the two gas generator case drain ports and ensure that they are connected to drain lines or capped, as applicable, to the appropriate aircraft installation configuration in accordance with PWC Service Information Letter (SIL) No. PW100–003, issued June 18, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be performed in accordance with the following PWC SIL:

| Document No. | Pages | Date |
|---|---|---|
| PW100–003 .... | 1 | June 18, 1997 |

*Total pages:* 1.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1; telephone (514) 647–2866, fax (514) 647–2888. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 9, 1997.

Issued in Burlington, Massachusetts, on August 12, 1997.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 97–22308 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 95–NM–228–AD; Amendment 39–10097; AD 97–16–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300–600 Series Airplanes; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the compliance time information in airworthiness directive (AD) 97–16–06 that was published in the **Federal Register** on August 1, 1997 (62 FR 41257). A portion of the specified compliance times was inadvertently omitted in the AD. This AD is applicable to all Airbus Model A300–600 series airplanes, and requires an inspection to detect cracks of certain attachment holes; and installation of a new fastener and follow-on inspections or repair, if necessary.

**DATES:** Effective September 5, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of September 5, 1997 (62 FR 41257, August 1, 1997).

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive (AD) 97–16–06, amendment 39–10097, applicable to all Airbus Model A300–600 series airplanes, was published in the **Federal Register** on August 1, 1997 (62 FR 41257). That AD requires an inspection to detect cracks of certain attachment holes; and installation of a new fastener and follow-on inspections or repair, if necessary.

As published, the phrase "whichever occurs later" after the compliance times specified in paragraphs (a)(1) and (a)(2) of the AD was inadvertently omitted.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of the AD remains September 5, 1997.

In rule FR Doc. 97–20131 published on August 1, 1997 (62 FR 41257), make the following corrections:

**§39.13 [Corrected]**

1. On page 41258, in the third column, paragraph (a)(1) of AD 97–16–06 is corrected to read as follows:

* * * * *

(a) * * *

(1) For airplanes on which Airbus Modification 10454 (reference Airbus Service Bulletin A300–57–6050) has not been installed: Inspect prior to the accumulation of 13,800 total landings, or within 750 landings after the effective date of this AD, whichever occurs later.

* * * * *

2. On page 41258, in the third column, paragraph (a)(2) of AD 97–16–06 is corrected to read as follows:

* * * * *

(a) * * *

(2) For airplanes on which Airbus Modification 10454 (reference Airbus Service Bulletin A300–57–6050) or Airbus Modification 10155 has been installed: Inspect prior to the accumulation of 18,700 total landings, or within 750 landings after the effective date of this AD, whichever occurs later.

* * * * *

Issued in Renton, Washington, on August 19, 1997.

**S. R. Miller,**

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

[FR Doc. 97–22488 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 97–AGL–23]**

## Modification of Class E Airspace; Grafton, ND

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Grafton, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 17 and Amendment 1 to the GPS SIAP to Runway 35 have been developed for Grafton Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This proposal increases the radius, and adds an extension to the north and an extension to the south, of the existing Class E airspace. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, November 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Wednesday, May 28, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace at Grafton, ND (62 FR 28814). The proposal would add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA

Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Grafton, ND, to accommodate aircraft executing the GPS Runway 17 SIAP and the GPS Runway 35 SIAP at Grafton Municipal Airport by increasing the radius, and adding an extension to the north and an extension to the south, of the existing Class E airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area will be depicted on appropriate aeronautical charts.

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 9159–1963 comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

**AGL ND E5 Grafton, ND [Revised]**

Grafton Municipal Airport, ND
(Lat. 48°24'17"N, long. 97°22'15"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Grafton Municipal Airport and within 1 mile each side of the 360° bearing extending from the 6.5-mile radius to 9 miles north of the airport and within 1 mile each side of the 180° bearing extending from the 6.5-mile radius to 9 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1997.

**Maureen Woods,**

*Manager, Air Traffic Division.*

[FR Doc. 97–22495 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 97–AGL–19]**

### Establishment of Class E Airspace; SD

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace within the State of South Dakota, west of Winner, SD. This airspace action allows more flexibility for Part 135 and air ambulance operators and provides a safer environment for all aircraft flying in the described controlled airspace. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to contain aircraft executing instrument flight rules (IFR) operations. The intended effect of this action is to provide segregation of aircraft using instrument procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, November 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPLEMENTARY INFORMATION:**

**History**

On Wednesday, May 21, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace within the State of South Dakota, west of Winner, SD (62 FR 27706). The proposal was to add controlled airspace extending upward from 1200 feet AGL to contain IFR operations in controlled airspace while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace within the State of South Dakota, west of Winner, SD. This airspace action provides adequate Class E airspace for operators executing IFR operations within the described controlled airspace. Controlled airspace extending upward from 1200 feet AGL is needed to contain aircraft executing IFR operations. The area will be depicted on appropriate aeronautical charts.

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

**List of Subjects in 14 CFR part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

**AGL SD E5 South Dakota, SD [New]**

That airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 43°40′00″N, on the east by longitude 100°05′00″W, on the south by the South Dakota, Nebraska border, and on the west by longitude 102°00′02″W.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1997.

**Maureen Woods,**

*Manager, Air Traffic Division.*

[FR Doc. 97–22497 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

### Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission ("Commission") amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for dishwashers. The Commission also announces that the current ranges of comparability for storage-type water heaters, heat pump water heaters, instantaneous water heaters, pool heaters, room air conditioners, furnaces, boilers, and split-system and single package central air conditioners and heat pumps will remain in effect until further notice. Finally, the Commission amends the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to Part 305 that contain cost calculation formulas. These amendments change the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity that was published in November, 1996, by the Department of Energy ("DOE").

**EFFECTIVE DATE:** November 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

**SUPPLEMENTARY INFORMATION:** The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979 (44 FR 66466 (Nov. 19, 1979)) in response to a directive in the Energy Policy and Conservation Act of 1975.[1] 42 U.S.C. 6294. The Rule covers eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters (this category includes storage-type water heaters, instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps). The Rule also covers pool heaters (59 FR 49556 (Sept. 28, 1994)) and contains requirements that pertain to fluorescent lamp ballasts (54 FR 28031 (July 5, 1989)), certain plumbing products (58 FR 54955 (Oct. 25, 1993)), and certain lighting products (59 FR 25176 (May 13, 1994, eff. May 15, 1995)).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually (by specified dates for each product type[2]) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

The annual submissions of data for dishwashers, room air conditioners, central air conditioners and heat pumps (including single package units and split systems), water heaters (including storage-type, instantaneous, and heat pump water heaters), furnaces, boilers, and pool heaters have been made and have been analyzed by the Commission.

The ranges of comparability for room air conditioners, split system and packaged unit central air conditioners and heat pumps, storage-type water heaters, instantaneous water heaters, heat pump water heaters, furnaces, boilers and pool heaters have not changed by more than 15% from the current ranges for these products. Therefore, these ranges will remain in effect until further notice.[3]

[1] The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for room air conditioners, water heaters (storage-type, instantaneous, and heat pump-type), furnaces, boilers, and pool heaters are due May 1; reports for dishwashers are due June 1; reports for central air conditioners and heat pumps are due July 1.

[3] The current ranges of comparability for gas-fired instantaneous water heaters and central air conditioners and heat pumps (both split system and single package units) were published on September 16, 1996 (61 FR 48620). The current ranges for storage-type water heaters, furnaces, and boilers were published on September 23, 1994 (59 FR 48796). The current ranges for heat pump water heaters, pool heaters, and room air conditioners (originally) were published on August 21, 1995 (60 FR 43367). A corrected version of the ranges for

The data submissions for dishwashers have resulted in new ranges of comparability figures for these products, which will supersede the current ranges, published on September 16, 1996 (61 FR 48620).

The Commission also is amending the cost calculation formulas appearing in section 2 of appendices H and I to part 305. These sections contain heating and cooling performance cost information for central air conditioners and heat pumps. Manufacturers must provide the formulas on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. This amendment changes the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity—8.31 cents per kilowatt-hour—that was published on November 18, 1996, by DOE (61 FR 58679)[4] and by the Commission on February 5, 1997 (62 FR 5316).

In consideration of the foregoing, the Commission revises appendix C, appendix H, and appendix I of part 305 by publishing the following ranges of comparability for use in required disclosures (including labeling) for dishwashers manufactured on or after November 24, 1997. The Commission also amends the cost calculation formulas in appendices H and I of part 305 so they will include the 1997 Representative Average Unit Cost for electricity. In addition, as of this effective date, manufacturers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for dishwashers on the 1997 Representative Average Unit Costs of Energy for electricity (8.31 cents per kilowatt-hour) and natural gas (61.2 cents per therm).

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments will not have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 605). The Commission has determined that virtually none of the manufacturers of dishwashers fall within the definition of "small entity" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR part 121. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

## PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

2. Appendix C to part 305 is revised to read as follows:

**Appendix C To Part 305—Dishwashers**

*Range Information*

"Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall be in accordance with appendix C to 10 CFR part 430, Subpart B. Load patterns shall conform to the operating normal for the model being tested.

| Capacity | Range of estimated annual energy consumption (kWh/yr.) | |
|---|---|---|
| | Low | High |
| Compact | 302 | 302 |
| Standard | 344 | 699 |

3. In section 2 of Appendix H of Part 305, the text and formulas are amended by removing the figure "8.6¢" whenever it appears and by adding, in its place, the figure "8.31¢". In addition, the text and formulas are amended by removing the figure "12.90¢" whenever it appears and by adding, in its place, the figure "12.47¢".

4. In section 2 of Appendix I of Part 305, the text and formulas are amended by removing the figure "8.6¢" wherever it appears and by adding, in its place, the figure "8.31¢". In addition, the text and formulas are amended by removing the figure "12.90¢" wherever it appears and by adding, in its place, the figure "12.47¢".

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 97–22489 Filed 8–22–97; 8.45 am]

BILLING CODE 6750–01–M

room air conditioners was published on November 13, 1995 (60 FR 56945). Because the Commission has never received any submissions of data for oil-fired instantaneous water heaters, the ranges for these products show "no data submitted" for all size categories. The Commission will not, therefore, amend the ranges for oil-fired instantaneous water heaters because they have not changed.

[4] This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by DOE for the industry's use in calculating, among other figures, the cost figures required by the Commission's Rule.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 314, 600, 601, 610, and 640

**[Docket No. 95N–0329]**

### Biologics Regulations; Reporting Changes to an Approved Application; Open Public Meeting

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

**ACTION:** Announcement of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an open public meeting to discuss issues related to the agency's final rule entitled, "Changes to an Approved Application" announced previously in the **Federal Register**. The final rule amended the biologics regulations for reporting changes to an approved application reviewed in the Center for Biologics Evaluation and Research (CBER) and the corresponding drug regulations for reporting changes to an approved application for specified biotechnology products reviewed in the Center for Drug Evaluation and Research (CDER). The purpose of the meeting is to present the regulatory procedures set forth in the final rule and to solicit public comment on a portion of the final rule that addresses the use of a "comparability protocol."

**DATES:** The open public meeting will be held on Wednesday, September 24, 1997, from 8:30 a.m. to 5 p.m. Registration for persons who want to participate at the meeting must be submitted to the agency by September 3, 1997, including written copies or a brief summary of the presentation, or any written comments for possible discussion at the meeting. Preregistration for persons who want to attend the meeting should be received by September 18, 1997.

**ADDRESSES:** The open public meeting will be held at the Quality Hotel, 8727 Colesville Rd., Silver Spring, MD 20910. Submit written requests for participation and written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23,

Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. To expedite the processing, written notices of participation may also be FAXED to 301–827–3079. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this notice.

Those persons interested in attending this meeting should submit their registration information, including name, title, firm name, address, telephone and fax number, to Toni Toomer (address below).

**FOR FURTHER INFORMATION CONTACT:** Toni Toomer, Center for Biologics Evaluation and Research (HFM–49), Division of Manufacturers Assistance and Training, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1310, FAX 301–827–3079.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 24, 1997, FDA published a final rule entitled, "Changes to an Approved Application" (62 FR 39890) and two notices of availability announcing corresponding guidance documents entitled, "Guidance for Industry: Changes to an Approved Application: Biological Products" (62 FR 39904) and "Guidance for Industry: Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products" (62 FR 39904).

FDA is announcing an open public meeting to discuss regulatory issues related to the final rule. The first part of the meeting will include an agency presentation of the regulatory provisions of the final rule and a discussion of the corresponding guidance documents, followed by a question and answer session.

In the second part of the meeting, the agency will solicit public comment on the use of a comparability protocol, which is an option available to applicants under the final rule. A comparability protocol describes the specific tests and validation studies and acceptable limits to be achieved to demonstrate the lack of adverse effect for specified types of changes on the safety or effectiveness of a product.

Every effort will be made to accommodate each person who wants to participate in the public meeting. However, because presentations will be limited to the second part of the meeting, the agency may not be able to accommodate all requests for formal presentations. Nevertheless, each person may participate in the open discussion at the end of the meeting. Accordingly, each person who wants to participate in the meeting is encouraged to submit a written request for participation, by close of business on September 3, 1997, and to include the following information: (1) File a written request for participation containing the name, address, telephone and fax number, affiliation, if any, of the participant, and topic of the presentation, and (2) submit a copy or a brief summary of their presentation, or any written comments for possible discussion at the meeting. The requested information, including the written notice for participation, may be submitted to the Dockets Management Branch (address above). Registration at the site will be done on a space-available basis on the day of the open public meeting beginning at 8:30 a.m.

Prior to the meeting, CBER will determine the schedule for the presenters. A schedule of the presenters will be filed with the Dockets Management Branch (address above) and mailed or faxed to each participant before the meeting. Interested persons attending the meeting who did not request an opportunity to make a presentation or those who did request an opportunity to make a presentation but due to the time limitations were not granted the request will be given the opportunity to make an oral presentation at the conclusion of the meeting, as time permits. There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

FDA will consider information presented and discussed at the meeting and written comments submitted to the Dockets Management Branch (address above) in the development of future guidance documents.

Dated: August 19, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–22555 Filed 8-22-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate and Chlortetracycline; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of March 19, 1997 (62 FR 12951) that amended the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma Inc. The document stated incorrectly that bacitracin methylene disalicylate and chlortetracycline Type B feeds were included in the approval. This document corrects that error.

**EFFECTIVE DATE:** March 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

In FR Doc. 97–6876, appearing on page 12951, in the **Federal Register** of Wednesday, March 19, 1997, the following correction is made:

1. On page 12951, in the third column under the "**SUMMARY**"caption, in line 9, "Types B and C" is corrected to read "Type C".

Dated: August 12, 1997.

**Michael J. Blackwell,**

*Deputy Commissioner for Veterinary Medicine.*

[FR Doc. 97–22553 Filed 8-22-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 573

**[Docket No. 86F–0060]**

### Food Additives Permitted in Feed and Drinking Water of Animals; Selenium

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is adopting without change the provisions of an interim rule regarding the approved use of selenium as a food additive in animal feeds. The interim rule implemented certain provisions of the Agriculture, Rural Development, FDA, and Related Agencies Appropriations Act of 1994, and the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994.

**EFFECTIVE DATE:** September 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. 1987 Amendments*

In the **Federal Register** of April 6, 1987 (52 FR 10887), and corrected on June 4, 1987 (52 FR 21001), FDA issued a final rule amending the selenium food additive regulation (§ 573.920 (21 CFR 573.920)) to increase the maximum amount of selenium supplementation permitted in animal feeds. The action was based on a food additive petition (FAP 2201) filed by the American Feed Industry Association, Inc. (AFIA), 1701 North Fort Myer Dr., Arlington, VA 22209. In issuing the 1987 amendments FDA determined, based on an environmental impact analysis report submitted by AFIA, that the amended uses would not have a significant impact on the human environment.

### *B. 1993 Stay of 1987 Amendments*

In the **Federal Register** of September 13, 1993 (58 FR 47962), FDA published a final rule that provided for a stay of the 1987 amendments to the selenium food additive regulations (hereinafter referred to as the 1993 final rule). This action resulted from allegations of inadequacies in FDA's finding of no significant impact and in the petitioners environmental assessment that supported the 1987 amendments. As a result of the stay of the 1987 amendments, the maximum permitted use levels of selenium in animal feeds returned to those levels permitted before FDA issued the 1987 amendments. FDA also stayed a 1989 amendment (54 FR 14214, April 10, 1989), to the regulation that provided for the use of a bolus for selenium supplementation at the increased levels, because the environmental assessment for the use of the bolus relied on the 1987 environmental analysis.

### *C. Legislative Actions*

The 103d Congress passed two laws (Pub. L. 103–330 and Pub. L. 103–354) that provided for suspension of FDA's 1993 stay until certain conditions were met. As a result, selenium is allowed to be administered in animal feed as sodium selenite or sodium selenate in the complete feed for chickens, swine, turkeys, sheep, cattle, and ducks as provided for by the 1987 amendments to § 573.920, until further notice. The published regulation provides for the currently acceptable levels of selenium supplementation of feed; that is, levels not to exceed 0.3 part per million (ppm) in complete feeds of chickens, swine, turkeys, sheep, cattle, and ducks; in feed supplements for sheep not to exceed 0.7 milligram (mg) per head per day and in beef cattle not to exceed 3 mg per head per day; and in free-choice salt-mineral mixes for sheep up to 90 ppm but not to exceed 0.7 mg per head per day and for beef cattle up to 120 ppm in a mixture for free-choice feeding not to exceed an intake of 3 mg per head per day. In addition, the orally administered, osmotically controlled, and constant release bolus for beef and dairy cattle provided for on April 10, 1989 (54 FR 14214), was also available until further notice.

### *D. 1995 Interim Rule*

In the **Federal Register** of October 17, 1995 (60 FR 53702), FDA published an interim rule that implemented the relevant provisions of the Agriculture, Rural Development, FDA, and Related Agencies Appropriations Act of 1994, and the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. Under the provisions of the Administrative Procedure Act in 5 U.S.C. 553(b)(B) and FDA's administrative practices and procedures regulation in § 10.40(e) (21 CFR 10.40(e)), the Commissioner of Food and Drugs (the Commissioner) found for good cause that prior notice and comment on this interim rule was not necessary. The interim rule did not involve any exercise of discretion by the Commissioner. It merely repeated the terms of Pub. L. 103–354. As provided in FDA's administrative practices and procedures regulation at § 10.40(e), FDA provided an opportunity for public comment on whether the interim rule should be modified or revoked.

## II. Summary of Comments

FDA received three comments in response to the interim rule. Two of the three comments were in full agreement with the interim rule. The third comment commented on the legislation rather than the interim rule. The comment indicated that no one opposed the stated purpose of the legislation, "to permit higher levels of selenium addition to feeds to assure proper animal and poultry nutrition." This comment however objected to what it characterized as the statute's elimination of the quality assurance provision of the 1993 final rule that every batch of selenium premix be analyzed. Specifically, the comment stated that in cases where animals or poultry were killed by consuming feed over-fortified with selenium, overfortification of the premix was the cause. Therefore, the comment believed that adherence to good manufacturing practice alone does not result in appropriate control of selenium levels in animal feeds from an animal safety perspective and that the statute should have retained a premix batch analysis requirement. Because this comment addressed the statute rather than FDA's implementation of the statute in the interim rule, no changes have been made to this final rule.

## III. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). The agency has reviewed this final rule and has determined that the rule is consistent with the principles set forth in the Executive Order and these two statutes. Furthermore, the final rule is not a significant regulatory action as defined by the Executive Order.

With this rule, FDA is adopting without change the provisions of an interim rule published in the **Federal Register** of October 17, 1995, regarding the approved use of selenium as a food additive in animal feeds. The interim rule implemented certain provisions of the Agriculture, Rural Development, FDA, and Related Agencies Appropriations Act of 1994, and the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. This legislation suspended the 1993 stay of a 1987 food additive approval, which amended the selenium food additive regulations to increase the maximum amount of selenium supplementation permitted in animal feeds, until certain conditions are met.

By now reaffirming the interim final rule, which merely implemented the legislation discussed in section I.D of this document, FDA has not imposed any new requirements on industry. The cost of the rule, therefore, is zero. The quality assurance provision stayed by the 1993 final rule, which required every batch of selenium premix to be analyzed, was not reinstated by the legislation or the interim final rule. The continued elimination of this requirement may result in a small cost savings to feed mills and others who were previously required to analyze every batch of premix and who will now have the option of doing so.

Under the Regulatory Flexibility Act, unless an agency certifies that a rule

will not have a significant impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency can identify at least one company which manufactures quality assurance products which are used in the selenium batch testing process. FDA has not prohibited the use of these batch testing products. They will still be available to feed mills if the feed mills wish to test every batch of selenium premix. As this final rule does not impose any new costs on this or other firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector of $100 million. Because the rule does not require any expenditures by industry members or State or local governments, FDA is not required to perform a cost/benefit analysis under the Unfunded Mandates Reform Act.

### IV. Final Action

The Commissioner has determined that the interim rule published on October 17, 1995, should be finalized without modification.

### List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

## PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

**Authority:** Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Accordingly, the interim rule amending 21 CFR 573.920 that was published in the **Federal Register** of October 17, 1995 (60 FR 53702), is adopted as a final rule without change.

Dated: August 8, 1997.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 97–22476 Filed 8-22-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 904

**[SPATS No. AR–027–FOR]**

### Arkansas Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** OSM is correcting a final rule that appeared in the **Federal Register** of April 29, 1997 (62 FR 23129). This document amended the Arkansas regulatory program (hereinafter referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). When citing the part of the regulation that Arkansas proposed to remove, OSM inadvertently omitted the letter of the paragraph that was proposed for removal. Likewise, OSM inadvertently omitted the letter of the paragraph from the Federal regulation that was a counterpart to this State regulation that was proposed for removal.

**EFFECTIVE DATE:** The amendment to 30 CFR part 904 (62 FR 23129) is effective April 29, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 97–10990, appearing on page 23129 in the **Federal Register** of Tuesday, April 29, 1997, the following correction is made:

On page 23133, the second column, lines two and three, "ASCMRC 816.89" and "30 CFR 816.89" should read "ASCMRC 816.89(d)" and "30 CFR 816.89(d)", respectively.

Dated: August 7, 1997.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97–22414 Filed 8–22–97; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

**[SPATS No. IN–138–FOR; State Program Amendment No. 95–3 II]**

### Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to its rules pertaining to the small operator assistance program (SOAP). Topics covered in the proposed amendment are definitions for program administrator and qualified laboratory, eligibility for assistance, filing for assistance, application approval and notice, program services and data requirements, qualified laboratories, assistance funding, and applicant liability. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations and to incorporate changes desired by the State.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone (317) 226–6700.

**SUPPLEMENTARY INFORMATION:**



### I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

## II. Submission of the Proposed Amendment

By letter dated January 13, 1997 (Administrative Record No. IND–1550), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. The proposed amendment revises the Indiana Administrative Code (IAC) at 310 IAC 12–3 pertaining to SOAP.

OSM announced receipt of the proposed amendment in the February 18, 1997, **Federal Register** (62 FR 7192), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. A proposed rule correction notice was published in the March 18, 1997, **Federal Register** (62 FR 12766). The public comment period closed on March 20, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to technical errors at 310 IAC 12–3–130(5), definition of qualified laboratory; 310 IAC 12–3–131(2)(B), eligibility for assistance; and 310 IAC 12–3–132(a)(3)(C), filing for assistance. OSM notified Indiana of these concerns by letter dated March 26, 1997 (Administrative Record No. IND–1562).

By letter dated April 30, 1997 (Administrative Record No. IND–1569), Indiana responded to OSM's concerns by submitting additional explanatory information showing that the editorial errors at 310 IAC 12–3–130(5), 12–3–131(2)(B), and 12–3–132(a)(3)(C) had either been corrected or would be corrected in an Errata to be published upon final approval of the proposed amendment by the Governor of Indiana. Because the additional information merely clarified certain provisions of Indiana's proposed amendment, OSM did not reopen the public comment period.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the director's findings concerning the proposed amendment.

### *A. Withdrawal of Previously Approved SOAP Amendment*

Indiana notified OSM in its letter dated January 13, 1997, that the Indiana Legislative Service Agency had rejected, for procedural reasons, a proposed SOAP amendment dated May 3, 1995, which was approved by the Director and codified on October 25, 1995 (60 FR 54593). Since Indiana did not adopt the SOAP amendment, the Director is removing the approval and is amending 30 CFR 914.15 to reflect this decision.

### *B. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

1. The proposed State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations pertaining to SOAP. Differences between the proposed State rules and the Federal regulations are nonsubstantive.

| Topic | State regulation | Federal regulation counterpart |
|---|---|---|
| Definition for program administrator | 310 IAC 12–3–130(4) | 30 CFR 795.3 |
| Definition for qualified laboratory | 310 IAC 12–3–130(5) | 30 CFR 795.3 |
| Eligibility for assistance | 310 IAC 12–3–131 | 30 CFR 795.6 |
| Filing for assistance | 310 IAC 12–3–132 | 30 CFR 795.7 |
| Application approval and notice | 310 IAC 12–3–132.5 | 30 CFR 795.8 |
| Program services and data requirements | 310 IAC 12–3–133 | 30 CFR 795.9 |
| Qualified laboratories | 310 IAC 12–3–134.1 | 30 CFR 795.10 |
| Assistance funding | 310 IAC 12–3–134.5 | 30 CFR 795.11 |
| Applicant liability | 310 IAC 12–3–135 (a) (1) through (3) and (b). | 30 CFR 795.12 |

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

2. Indiana also proposed to remove previously approved 310 IAC 12–3–134, concerning qualified laboratories, and to replace it with 310 IAC 12–3–134.1. As noted in the above table, 310 IAC 12–3–134.1 is substantively identical to the Federal regulations at 30 CFR 795.10, concerning qualified laboratories. Therefore, the proposed removal of 310 IAC 12–3–134 will not render the Indiana rules less effective than the Federal regulations.

### *C. Revisions to Indiana's Rules With No Corresponding Federal Regulations*

At 310 IAC 12–3–135(a)(4), Indiana proposed to include another criterion under which a SOAP applicant is responsible for reimbursing Indiana for the cost of services rendered under its program. This criterion requires the applicant to reimburse Indiana if mining does not begin within six months after obtaining the permit. The Federal regulations at 30 CFR 795.12(a), concerning applicant liability for reimbursement of the cost of services, do not contain this specific requirement. However, the Director finds the proposed regulation is not inconsistent with the intent of the requirements of SMCRA or the Federal regulations pertaining to reimbursement for SOAP services. Therefore, the addition of this new criterion does not render the Indiana rules less effective than the Federal regulations at 30 CFR Part 795.12.

## IV. Summary and Disposition of Comments

### Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

### Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1552). On February 13, 1997, the U.S. Fish and Wildlife Service responded that it had no specific comments on the program amendment (Administrative Record No. IND–1554). On March 6, 1997, the U.S. Mine Safety and Health Administration responded that no comments were being submitted for the proposed revisions (Administrative Record No. IND–1561).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. IND–1552). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IND–1552). Neither the SHPO nor ACHP responded to OSM's request.

**V. Director's Decision**

Based upon the above findings, the Director approves the proposed amendments as submitted by Indiana on January 13, 1997, and as revised on April 30, 1997.

The Director approves the rules as proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

For the reasons discussed in finding III.A, the Director is also amending 30 CFR Part 914 by removing the approval of an Indiana proposed amendment that was submitted on May 3, 1995, and codified on October 25, 1995 (60 FR 54593).

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement the above decisions. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 23, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

**PART 914—INDIANA**

1. The authority citation for part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by revising the entry for "Original amendment submission date" of May 3, 1995, and by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 914.15 Approval of Indiana regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| May 3, 1995 | September 14, 1995 | 310 IAC 12–5–64.1(c), –128.1(c); correction of typographical, clerical, spelling errors |
| * | * | * |
| January 13, 1997 | August 25, 1997 | 310 IAC 12–3–130 (4), (5), –131, –132, –132.5, –133, –134, –134.1, –134.5, –135 |

[FR Doc. 97–22412 Filed 8–22–97; 8:45 am]
BILLING CODE 4310–05–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

**[SPATS No. IN–136–FOR; State Program Amendment No. 95–4]**

### Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions and additions to its rules pertaining to repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by coal mining operations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton—Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone (317) 226–6700.

**SUPPLEMENTARY INFORMATION:**



### I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16

### II. Submission of the Proposed Amendment

By letter dated January 14, 1997 (Administrative Record No. IND–1551), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to a May 20, 1996, letter (Administrative Record No. IND–1540) that OSM sent to Indiana in accordance with 30 CFR 732.17(c)

OSM announced receipt of the proposed amendment in the February 18, 1997. **Federal Register** (62 FR 7189), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 20, 1997.

During its review of the amendment, OSM identified some concerns pertaining to minor word omissions and spelling and typographical errors. OSM notified Indiana of these concerns by letter dated March 26, 1997 (Administrative Record No. IND–1562).

By letter dated May 1, 1997 (Administrative Record NO. IND–1570), Indiana responded to OSM's concerns by stating that the necessary corrections will be achieved pursuant to a published Errata. Based upon the State's response and the nature of the concerns, OSM did not reopen the comment period.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Indiana's Regulations That Are Substantively Identical to the Corresponding Federal Regulations*

| Topic | State regulations | Federal counterpart regulations |
|---|---|---|
| Definition for "Drinking, domestic, or residential water supply. | 310 IAC 12–0.5–39.5 | 30 CFR 701.5 |
| Definition for "Material damage" | 310 IAC 12.05–72.1 | 30 CFR 701.5 |
| Definition for "Noncommercial building" | 310 IAC 12.05–75.5 | 30 CFR 701.5 |
| Definition for "Occupied residential dwelling and structures related thereto". | 310 IAC 12.0–77.5 | 30 CFR 701.5 |
| Definition for "Replacement of water supply" | 310 IAC 12.0.5–107.5 | 30 CFR 701.5 |
| Protection of hydrologic balance | 310 IAC 12–3–81(c)(2) | 30 CFR 784.14(e)(3)(iv) |
| Subsidence control plan | 310 IAC 12–3–87.1 | 30 CFR 784.20 |
| Water rights and replacement | 310 IAC 12–5–94 | 30 CFR 817.41(j) |
| Subsidence control: General requirements | 310 IAC 12–5–130.1 | 30 CFR 817.121 |

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal rules.

### IV. Summary and Disposition of Comments

*Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1553). OSM received two comments; one from the U.S. Department of Labor Mine Safety and Health Administration and the other from the U.S. Fish and Wildlife Service (Administrative Record Nos. IND–1560 and IND–1559, respectively). The Mine Safety and Health Administration responded that it had no comments on the proposed amendment. The U.S. Fish and Wildlife Service commented that it could not

determine if Indiana's regulations protect fish and wildlife habitats from subsidence effects to the same extent that they are protected by surface mining regulations. Indiana's proposed regulations concerning subsidence are substantially identical to the Federal regulations and, therefore, are not inconsistent with the Federal requirements. The appropriateness of the Federal regulations is not at issue in this rulemaking.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1553). EPA did not respond to OSM's request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IND–1553). Neither SHPO nor ACHP responded to OSM's request.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Indiana on January 14, 1997, and pursuant to the State's letter dated May 1, 1997.

The Director approves the rules as proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 29, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

**PART 914—INDIANA**

1. The authority citation for part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 914.15 Approval of Indiana regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| January 14, 1997 | August 25, 1997 | 310 IAC 12–0.5–39.5, 72.1, 75.5, 77.5, 107.5; 12–3–81, 87.1; 12–5–94, 130.1 |

[FR Doc. 97–22413 Filed 8–22–97; 8:45 am]
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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 934

**[ND–036–FOR, Amendment No. XXIV]**

## North Dakota Regulatory Program

**AGENCY:** The Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed deletions of statutes pertaining to the North Dakota Reclamation Research Advisory Committee. The amendment revised the North Dakota program to improve operational efficiency.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Casper Field Office Director, Telephone: (307) 261–6550, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

### II. Proposed Amendment

By letter dated May 2, 1997, North Dakota submitted a proposed amendment to its program (amendment No. XXIV, administrative record No. ND–Y–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provisions of the North Dakota Century Code (NDCC) that North Dakota proposed to delete were: NDCC 38–14.1–04.1, Reclamation Research Advisory Committee; NDCC 38–14.1–04.2, advisory committee responsibilities; and NDCC 38–14.1–04.3, reclamation research objectives.

OSM announced receipt of the proposed amendment in the June 5, 1997, **Federal Register** (62 FR 30800), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–Y–06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 7, 1997.

### III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on May 2, 1997, is not inconsistent with SMCRA. Accordingly, the Director approves the proposed amendment.

*NDCC 38–14.1–04.1, 2, and 3, Reclamation Research Advisory Committee; Advisory Committee Responsibilities; Reclamation Research Objectives*

These actions established the Reclamation Research Advisory Committee, enumerated its responsibilities, and listed its objectives. As stated in the narrative that accompanied this State Program Amendment, the Committee was set up to review and inventory reclamation research projects that have been conducted in North Dakota, and to review and recommend proposed research projects that would be funded and administrated by the Public Service Commission. Through the Committee, the Public Service Commission has carried out the reviews and inventories of reclamation research projects that have been carried out in North Dakota. With the closing of the North Dakota State University's Land Reclamation Research Center in Mandan and with very few other active reclamation research projects in the state, there is no longer a need for updating this inventory in the future. In addition, except for a few abandoned mined land research projects that were completed with Federal funds, no funds have been available to the Commission for carrying out reclamation research and no funds are anticipated for Commission funded reclamation research in the future. Since there is no longer a need for the committee, the North Dakota Legislative voted, and the Governor signed, legislation to repeal the provisions establishing it. Since the provisions concerning the Reclamation Research Advisory Committee have no counterpart in SMCRA, repealing the provisions is not inconsistent with SMCRA.

### IV. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

The U.S. Fish and Wildlife Service responded on June 25, 1997, that it believed the proposed changes by North Dakota are logical and reasonable (administrative record No. ND–Y–02).

The U.S. Army Corps of Engineers responded on June 24, 1997, that it concurs with the elimination of the committee (administrative record number ND–Y–04).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from EPA (administrative record No. ND–Y–05). It responded June 26, 1997, with a "no comment" letter (administrative record No. ND–Y–03).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–Y–05). Neither SHPO nor ACHP responded to OSM's request.

### V. Director's Decision

Based on the above finding, the Director approves North Dakota's proposed amendment as submitted on May 2, 1997. The Director approves, as discussed in the Director's Finding Section, deletion of NDCC 38–14.1–04.1, Reclamation Research Advisory Committee; NDCC 38–14.1–04.2, Advisory Committee Responsibilities; and NDCC 38–14.1–04.3, Reclamation Research Objectives.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being

amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed States regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining.

Dated: August 5, 1997.

**Richard J. Seibel,**

*Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 934.15 Approval of North Dakota regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * * * |
| May 2, 1997 | August 25, 1997 | NDCC 38–14.1–04.1, .2, .3 |

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 51**

**[FRL–5880–9]**

**RIN 2060–AG70**

## Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of 16 Compounds

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

**ACTION:** Final rule.

**SUMMARY:** This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for any Federal implementation plan (FIP) for an ozone nonattainment area. This revision would add 16 compounds (shown in Table 2) to the list of compounds excluded from the definition of VOC on the basis that these compounds have negligible contribution to tropospheric ozone formation. These compounds have potential for use as refrigerants, aerosol propellants, fire extinguishants, blowing agents and solvents.

**DATES:** This rule is effective September 24, 1997.

**ADDRESSES:** The EPA has established a public docket for this action, A–96–36, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

**SUPPLEMENTARY INFORMATION:** *Regulated entities.* Entities potentially regulated by

this action are those which use and emit VOC and States which have programs to control VOC emissions.

| Category | Examples of regulated entities |
|---|---|
| Industry .... | Industries that use refrigerants, blowing agents, or solvents. |
| States ..... | States which have regulations to control volatile organic compounds. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## I. Background

On September 25, 1995, the Alliance for Responsible Atmospheric Policy (Alliance) submitted a petition to the EPA which requested that the compounds shown in Table 1 be added to the list of compounds which are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s). (The original petition also included five other compounds (CFC–111, CFC–112, CFC–112A, CFC–113a, and CFC–114a) not shown in Table 1, but the petitioner later requested that these compounds be removed from consideration.)

Potential uses for these compounds are also shown in Table 1. Blowing agent refers to products used in the manufacture of foamed plastic. The compounds for which no use is shown have no currently recognized commercial end-use. However, they may be either intermediates or unintentional byproducts resulting from the manufacture of other compounds.

TABLE 1.—COMPOUNDS PETITIONED FOR VOC EXCLUSION

[Along with potential uses of compounds]

| Compound | Potential use |
|---|---|
| HFC–32 | Refrigerant. |
| HFC–161 | Aerosol propellant, blowing agent. |
| HFC–236fa | Fire extinguishant, refrigerant. |
| HFC–245ca | Refrigerant, blowing agent. |
| HFC–245eb | Refrigerant, blowing agent. |
| HFC–245fa | Refrigerant, blowing agent. |
| HFC–245ea | Solvent. |
| HFC–236ea | Refrigerant, blowing agent. |
| HFC–365mfc | Blowing agent. |
| HCFC–31 | |
| HCFC–150a | |
| HCFC–151a | |
| HCFC–123a | Blowing agent. |
| $C_4F_9OCH_3$ | Solvent. |
| $(CF_3)_2CFCF_2OCH_3$ | Solvent. |
| $C_4F_9OC_2H_5$ | Solvent. |
| $(CF_3)_2CFCF_2OC_2H_5$ | Solvent. |

In support of the petitions, the Alliance supplied information on the photochemical reactivity of the individual compounds. This information consisted mainly of the rate constant for the reaction of the compound with the hydroxyl (OH) radical. This rate constant ($k_{OH}$ value) is commonly used as one measure of the photochemical reactivity of compounds. The petitioner compared the rate constants with that of ethane which has already been listed as photochemically negligibly reactive (ethane is the compound with the highest $k_{OH}$ value which is currently regarded as negligibly reactive). The scientific information which the petitioner has submitted in support of the petition has been added to the docket for this rulemaking. This information includes references for the journal articles where the rate constant values are published.

For the petition submitted by the Alliance, the existing data support that the reactivities of the compounds submitted (except for HCFC–150a), with respect to reaction with OH radicals in the atmosphere, are substantially lower than that of ethane. Based on the information submitted with the petition, EPA proposed on March 17, 1997 (62 FR 12583) to add the 16 compounds shown in Table 2 below to the list of negligibly reactive compounds in EPA's definition of VOC found in 40 CFR 51.100(s). One of the compounds in the petition (HCFC–150a) was not proposed for exemption since EPA thought that the supporting information did not justify a "negligibly reactive" rating at this time.

## II. Comments on the Proposal and EPA Response

The EPA received written comments on the proposal from four organizations. The comments were from the petitioner and three manufacturing companies. All four comment letters supported the exclusion of the 16 compounds as VOC. Copies of these comments have been added to the docket (A–96–36) for this action.

In the proposal for today's action, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the Act). During the comment period, no one requested a public hearing so none was held.

Based on the information presented in the proposal notice and on the comments received during the public comment period, EPA has decided to list the compounds in Table 2 as negligibly reactive.

TABLE 2.—COMPOUNDS ADDED TO THE LIST OF NEGLIGIBLY REACTIVE COMPOUNDS

| Compound | Chemical name |
|---|---|
| HFC–32 | difluoromethane. |
| HFC–161 | ethylfluoride. |
| HFC–236fa | 1,1,1,3,3,3-hexafluoropropane. |
| HFC–245ca | 1,1,2,2,3-pentafluoropropane. |
| HFC–245ea | 1,1,2,3,3-pentafluoropropane. |
| HFC–245eb | 1,1,1,2,3-pentafluoropropane. |
| HFC–245fa | 1,1,1,3,3-pentafluoropropane. |
| HFC–236ea | 1,1,1,2,3,3-hexafluoropropane. |
| HFC–365mfc | 1,1,1,3,3-pentafluorobutane. |
| HCFC–31 | chlorofluoromethane. |
| HCFC–123a | 1,2-dichloro-1,1,2-trifluoroethane. |
| HCFC–151a | 1-chloro-1-fluoroethane. |
| $C_4F_9OCH_3$ | 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane. |
| $(CF_3)_2CFCF_2OCH_3$ | 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane. |
| $C_4F_9OC_2H_5$ | 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane. |

TABLE 2.—COMPOUNDS ADDED TO THE LIST OF NEGLIGIBLY REACTIVE COMPOUNDS—Continued

| Compound | Chemical name |
|---|---|
| $(CF_3)_2CFCF_2OC_2H_5$ | 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane. |

Table 3 gives Chemical Abstract Service (CAS) numbers for the compounds in Table 2.

TABLE 3.—CHEMICAL ABSTRACT SERVICE (CAS) NUMBERS FOR COMPOUNDS

| Compound | CAS number |
|---|---|
| HFC–32 | 75–10–5 |
| HFC–161 | 353–36–6 |
| HFC–236fa | 690–39–1 |
| HFC–245ca | 679–86–7 |
| HFC–245ea | 24270–66–4 |
| HFC–245eb | 431–31–2 |
| HFC–245fa | 460–73–1 |
| HFC–236ea | 431–63–0 |
| HFC–365mfc | 406–58–6 |
| HCFC–31 | 593–70–4 |
| HCFC–123a | 354–23–4 |
| HCFC–151a | 1615–75–4 |
| $C_4F_9OCH_3$ | 163702–07–6 |
| $(CF_3)_2CFCF_2OCH_3$ | 163702–08–7 |
| $C_4F_9OC_2H_5$ | 163702–05–4 |
| $(CF_3)_2CFCF_2OC_2H_5$ | 163702–06–5 |

## III. Final Action

Today's action is based on EPA's review of the material in Docket No. A–96–36. The EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to exclude the compounds in Table 2 as VOC for ozone SIP's and ozone control strategies for purposes of attaining the ozone NAAQS. The revised definition will also apply for purposes of any FIP's for ozone nonattainment areas (e.g. 40 CFR 52.741(a)(3)). States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, States should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy.

## IV. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this rulemaking. The principle purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and, (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A)).

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### *C. Unfunded Mandates Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgation of an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule, unless EPA publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments including tribal governments, it must have developed under section 203 of the UMRA a small government plan which informs, educates and advises small governments on compliance with the regulatory requirements. Finally, section 204 provides that for any proposed or final rule that imposes a mandate on a State, local or tribal government of $100 million or more annually, the Agency must provide an opportunity for such governmental entities to provide input in development of the proposed rule.

Since today's rulemaking is deregulatory in nature and does not impose any mandate on governmental entities or the private sector, EPA has determined that sections 202, 203, 204 and 205 of the UMRA do not apply to this action.

### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA analysis in those instances where the regulation would impose a substantial impact on a significant number of small entities. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted. Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this rule will not have an impact on small entities because no additional costs will be incurred.

### *E. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

### *F. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

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

Dated: August 18, 1997.

**Carol M. Browner,**

*Administrator.*

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

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 51.100 is amended by revising paragraph (s) introductory text and paragraph (s)(1) to read as follows:

**§ 51.100 Definitions.**

* * * * *

(s) *Volatile organic compounds (VOC)* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC–225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC–225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC–43–10mee); difluoromethane (HFC–32); ethylfluoride (HFC–161); 1,1,1,3,3,3-hexafluoropropane (HFC–236fa); 1,1,2,2,3-pentafluoropropane (HFC–245ca); 1,1,2,3,3-pentafluoropropane (HFC–245ea); 1,1,1,2,3-pentafluoropropane (HFC–245eb); 1,1,1,3,3-pentafluoropropane (HFC–245fa); 1,1,1,2,3,3-hexafluoropropane (HFC–236ea); 1,1,1,3,3-pentafluorobutane (HFC–365mfc); chlorofluoromethane (HCFC–31); 1-chloro-1-fluoroethane (HCFC–151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC–123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

* * * * *

[FR Doc. 97–22510 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OH104–1A; FRL–5877–9]**

### Approval and Promulgation of Maintenance Plan Revisions; Ohio

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) is approving through "direct final" procedure, a June 10, 1997, request from Ohio, for State Implementation Plan (SIP) maintenance plan revisions for the following areas: Toledo area (including Lucas and Wood counties), the Cleveland-Akron-Lorain area (including Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage counties), and the Dayton-Springfield area (including Montgomery, Clark, Greene, and Miami counties). The maintenance plan revisions are allocating to the mobile source emission budget for transportation conformity a portion of the existing "Safety Margins." The safety margin is the difference between the attainment inventory level of the total emissions and the projected levels of the total emissions in the final year of the maintenance plan.

**DATES:** This "direct final" rule is effective on October 24, 1997, unless USEPA receives significant written adverse or critical comments (which have not already been addressed) by September 24, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

**ADDRESSES:** Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Clean Air Act in section 176(c) requires conformity of activities to an implementation plan's purpose of attaining and maintaining the National ambient air quality standards. On November 24, 1993, the USEPA promulgated a final rule establishing criteria and procedures for determining

conformity of transportation plans, programs and projects funded or approved under Title 23 U.S.C. of the Federal Transit Act. The State of Ohio finalized and adopted State transportation conformity rules on August 1, 1995, the rules became effective August 21, 1995, and Ohio submitted the rules as a SIP revision request on August 17, 1995. The rules were approved by the USEPA on July 15, 1996 (61 FR 24702).

The transportation conformity rules require, among other things, a comparison to the mobile source emissions budget established by a control strategy SIP. A control strategy SIP is defined by the conformity rules to be a maintenance plan, an attainment demonstration, or a rate of progress plan. The Toledo area, Dayton/Springfield area, and Cleveland/Akron/Lorain area in Ohio are all maintenance areas with approved maintenance plans. The USEPA approval of the maintenance plans established the mobile source budget for transportation conformity purposes.

In the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188) the emissions budget concept is explained. The preamble also describes how to establish the motor vehicle emissions budget in the SIP and how to revise the emissions budget. The State transportation conformity rule at 3745–101–16 of the Ohio Administrative Code allows the mobile source emissions budget to be changed as long as the total level of emissions from all sources remain below the milestone level. In the case of a maintenance plan the milestone level is the attainment level established in the maintenance plan.

The maintenance plan is designed to plan for future growth while still maintaining the ozone air quality standard. Growth in industries, population and traffic is offset with reductions from cleaner cars and other emissions reduction programs. Through the maintenance plan the State and local agencies can manage the air quality while providing for growth.

**II. Evaluation of the State Submittals**

On June 10, 1997, Ohio submitted to the USEPA SIP revision requests for the Toledo area (including Lucas and Wood counties), the Cleveland-Akron-Lorain area (including Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage counties), and the Dayton-Springfield area (including Montgomery, Clark, Greene, and Miami counties). Public hearings for the Cleveland-Akron-Lorain area and the Dayton-Springfield area regarding these issues were held on June 3, 1997. A public hearing for the Toledo area was held on July 3, 1997. Documentation on the public hearings were submitted to complete the SIP revision requests.

*(1) Toledo SIP Revision*

Ohio has requested to allocate to the Toledo mobile source budget part of the reductions achieved between the 1990 attainment inventory year and the 2005 projected emissions inventory (57.338 tons/day Volatile Organic Compounds (VOC) existing safety margin, and 46.38 tons/day Oxides of Nitrogen ($NO_x$) existing safety margin, as described in 60 FR 21456 and 60 FR 21490; May 2, 1995). The SIP revision requests the allocation of 6.0 tons/day VOC, and 10.5 tons/day $NO_x$, into the area's mobile source budget from the existing safety margin. Table 1 illustrates the approved emissions budgets for VOC and $NO_x$ from point, mobile (on-road) and area sources. The safety margin allocations are shown in table 2.

TABLE 1.—$NO_x$ AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, TOLEDO

[Tons/day]

| Source category | 1990 | 1996 | 2000 | 2005 |
|---|---|---|---|---|
| VOC Emissions: | | | | |
| Point | 60.08 | 39.49 | 39.31 | 38.87 |
| Mobile (on-road) | 66.33 | 51.28 | 41.25 | [1] 29.85 |
| Area | 37.25 | 37.35 | 37.56 | 37.60 |
| Totals | 163.66 | 128.12 | 118.12 | 106.32 |
| Safety Margin=1990 total emissions—2005 total emissions=57.34 tons/day VOC. | | | | |
| $NO_x$ Emissions: | | | | |
| Point | 73.97 | 73.40 | 40.15 | 40.69 |
| Mobile (on-road) | 37.82 | 32.56 | 29.06 | 24.69 |
| Area | 10.26 | 10.27 | 10.28 | 10.29 |
| Totals | 122.05 | 116.23 | 79.49 | 75.67 |
| Safety Margin=1990 total emissions—2005 total emissions=46.38 tons/day $NO_x$ | | | | |

[1] On May 2, 1995, the USEPA approved the addition of 1.142 tons/day VOC of the existing "safety margin" into the year 2005 VOC mobile source budget for purposes of conformity. (60 FR 21458; May 2, 1995)

TABLE 2.—ALLOCATION OF SAFETY MARGIN TO THE 2005 MOBILE SOURCE BUDGET, TOLEDO

[Tons/day]

| Source category | 1990 | 1996 | 2000 | 2005 |
|---|---|---|---|---|
| VOC Emissions: | | | | |
| Point | 60.08 | 39.49 | 39.31 | 38.87 |
| Mobile (on-road) | 66.33 | 51.28 | 41.25 | 35.85 |
| Area | 37.25 | 37.35 | 37.56 | 37.60 |
| Totals | 163.66 | 128.12 | 118.12 | 112.32 |
| Remaining Safety Margin=1990 total emissions—2005 total emissions=51.34 tons/day VOC. | | | | |
| $NO_x$ Emissions: | | | | |
| Point | 73.97 | 73.40 | 40.15 | 40.69 |
| Mobile (on-road) | 37.82 | 32.56 | 29.06 | 35.19 |

TABLE 2.—ALLOCATION OF SAFETY MARGIN TO THE 2005 MOBILE SOURCE BUDGET, TOLEDO—Continued

[Tons/day]

| Source category | 1990 | 1996 | 2000 | 2005 |
|---|---|---|---|---|
| Area | 10.26 | 10.27 | 10.28 | 10.29 |
| Totals | 122.05 | 116.23 | 79.49 | 86.17 |

Remaining Safety Margin=1990 total emissions—2005 total emissions=35.88 tons/day $NO_x$.

Table 2 illustrates that the requested portion of the safety margin can be allocated to the mobile source budget and still remain at or below the 1990 attainment level of total emissions for the Toledo area. This allocation is allowed by the conformity rule since the area would still be at or below the 1990 attainment level for the total emissions in the area.

*(2) Cleveland-Akron-Lorain SIP Revision*

Ohio has requested to allocate to the Cleveland-Akron-Lorain mobile source budget, part of the reduction achieved between the 1993 attainment inventory year and the 2006 projected emissions inventory (120.2 tons/day VOC existing safety margin, and 41.5 tons/day $NO_X$ existing safety margin, as described in 61 FR 20458; May 7, 1996). The SIP revision requests the allocation of 33.9 tons/day VOC, and 29.0 tons/day $NO_X$, into the area's mobile source budget. Table 3 illustrates the approved emissions budgets for VOC and $NO_X$ from point, mobile (on-road) and area sources. The safety margin allocations are shown in table 4.

TABLE 3.—SUMMARY OF $NO_X$ AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, CLEVELAND/AKRON/LORAIN

[Tons/day]

| Source category | 1990 | 1993 | 1996 | 2000 | 2006 |
|---|---|---|---|---|---|
| VOC Emissions: | | | | | |
| Point | 82.22 | 75.75 | 78.55 | 82.44 | 88.63 |
| Mobile (on-road) | 248.4 | 181.4 | 131.2 | 78.4 | 48.8 |
| Area | 201.05 | 201.37 | 201.45 | 201.63 | 200.86 |
| Totals | 531.7 | 458.5 | 411.2 | 362.5 | 338.3 |
| Safety Margin=1993 total emissions—2006 total emissions=120.2 tons/day VOC. | | | | | |
| $NO_X$ Emissions: | | | | | |
| Point | 245.59 | 254.61 | 263.91 | 277.05 | 298.00 |
| Mobile (on-road) | 176.6 | 159.9 | 142.2 | 95.5 | 75.4 |
| Area | 80.46 | 80.56 | 80.51 | 80.61 | 80.18 |
| Totals | 502.6 | 495.1 | 486.6 | 453.2 | 453.6 |
| Safety Margin=1993 total emissions—2006 total emissions=41.5 tons/day $NO_X$. | | | | | |

TABLE 4.—ALLOCATION OF VOC EMISSIONS TO THE 2006 MOBILE SOURCE BUDGET, CLEVELAND/AKRON/LORAIN

[Tons/day]

| Source category | 1990 | 1993 | 1996 | 2000 | 2006 |
|---|---|---|---|---|---|
| VOC Emissions: | | | | | |
| Point | 82.22 | 75.75 | 78.55 | 82.44 | 88.63 |
| Mobile (on-road) | 248.4 | 181.4 | 131.2 | 78.4 | 82.7 |
| Area | 201.05 | 201.37 | 201.45 | 201.63 | 200.86 |
| Totals | 531.7 | 458.5 | 411.2 | 362.5 | 372.2 |
| Remaining Safety Margin=1993 total emissions—2006 total emissions=86.3 tons/day VOC. | | | | | |
| $NO_X$ Emissions: | | | | | |
| Point | 245.59 | 254.61 | 263.91 | 277.05 | 298.00 |
| Mobile (on-road) | 176.6 | 159.9 | 142.2 | 95.5 | 104.4 |
| Area | 80.46 | 80.56 | 80.51 | 80.61 | 80.18 |
| Totals | 502.6 | 495.1 | 486.6 | 453.2 | 482.6 |
| Remaining Safety Margin=1993 total emissions—2006 total emissions=12.5 tons/day $NO_X$. | | | | | |

Tables 3 and 4 illustrate that the SIP revision request can be granted to allocate a portion of the safety margin to the mobile source budget and still remain at or below the 1993 attainment year inventory total for the Cleveland/Akron/Lorain area. This allocation is allowed by the conformity rule since the area would still be at or below the 1993 attainment level for the total emissions in the area.

*(3) Dayton-Springfield SIP Revision*

Ohio has requested to allocate to the Dayton-Springfield mobile source budget, the reduction achieved between the 1990 attainment inventory year and the 2005 projected emissions inventory (2.4 tons/day VOC existing safety margin, as described in 60 FR 22289; May 5, 1995). The SIP revision requests the allocation of the 2.4 tons/day VOC safety margin into the area's mobile source budget. Table 5 illustrates the approved emissions budgets for VOC from point, mobile (on-road) and area sources. The safety margin allocations are shown in table 6.

TABLE 5.—VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, DAYTON-SPRINGFIELD

[Tons/day]

| Source category | 1990 | 1996 | 2000 | 2005 |
|---|---|---|---|---|
| VOC Emissions: | | | | |
| Point | 37.4 | 61.6 | 77.7 | 97.4 |
| Biogenic | 105.2 | 105.2 | 105.2 | 105.2 |
| Mobile (on-road) | 103.6 | 45.5 | 39.4 | 31.7 |
| Area | 54.9 | 58.3 | 60.6 | 64.4 |
| Totals | 301.1 | 270.6 | 282.9 | 298.7 |

Safety Margin=1990 total emissions−2005 total emissions=2.4 tons/day VOC.

TABLE 6.—ALLOCATION OF VOC EMISSIONS TO THE 2005 MOBILE SOURCE BUDGET, DAYTON-SPRINGFIELD

[Tons/day]

| Source category | 1990 | 1996 | 2000 | 2005 |
|---|---|---|---|---|
| VOC Emissions: | | | | |
| Point | 37.4 | 61.6 | 77.7 | 97.4 |
| Biogenic | 105.2 | 105.2 | 105.2 | 105.2 |
| Mobile (on-road) | 103.6 | 45.5 | 39.4 | 34.1 |
| Area | 54.9 | 58.3 | 60.6 | 64.4 |
| Totals | 301.1 | 270.6 | 282.9 | 301.1 |

Remaining Safety Margin=1990 total emissions−2005 total emissions=0.0 tons/day VOC.

As illustrated by Tables 5 and 6 the SIP revision requests to allocate all of the VOC safety margin to the mobile source budget. This allocation is allowed by the conformity rule since the area would still be at the 1990 attainment level for the total emissions in the area.

The USEPA's review of the SIP revision requests finds that the requested allocation of the safety margins for the Toledo, Cleveland/Akron/Lorain and Dayton/Springfield areas are approvable since the approval of the new mobile source emissions budgets will keep the total emissions for the area at or below the attainment year inventory level as required by the transportation conformity regulations.

**III. USEPA Action**

The USEPA approves the requested allocation of the safety margin to the mobile source budget for the Toledo, Cleveland-Akron-Lorain, and Dayton-Springfield areas. This action will be effective on October 24, 1997 unless, by September 24, 1997, significant written adverse or critical comments on the approval are received.

If the USEPA receives such written adverse comments, the approval will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All written public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such written comments are received, the public is advised that this action will be effective on October 24, 1997.

**IV. Administrative Requirements**

*(A) Future Requests*

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

*(B) Executive Order 12866*

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

*(C) Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*,

427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

*(D) Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

*(E) Audit Privilege and Immunity Law*

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70–3745.73 of the Ohio Revised Code). U.S. EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

*(F) Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by section 804(2).

*(G) Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen Oxides, Transportation conformity.

Dated: August 8, 1997.

**David A. Ullrich,**

*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(6) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

(a) * * *

(6) Approval—On June 10, 1997, Ohio submitted revisions to the maintenance plans for the Toledo area (including Lucas and Wood counties), the Cleveland/Akron/Lorain area (including Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage counties), and the Dayton-Springfield area (including Montgomery, Clark, Greene, and Miami counties). The revisions consist of an allocation of a portion of the safety margin in each area to the transportation conformity mobile source budget for that area. The mobile source budgets for transportation conformity purposes for Toledo are now: 35.85 tons per day of volatile organic compound emissions for the year 2005 and 35.19 tons per day of oxides of nitrogen emissions for the year 2005. The mobile source budgets for transportation conformity purposes for Cleveland-Akron-Lorain are now: 82.7 tons per day of volatile organic compound emissions for the year 2006 and 104.4 tons per day of oxides of nitrogen emissions for the year 2006. For the Dayton-Springfield area, the oxides of nitrogen mobile source budget remains the same and the mobile source budget for volatile organic compounds is now 34.1 tons per day.

* * * * *

[FR Doc. 97–22067 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 034–0049a FRL–5880–4]**

### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This revised rule controls VOC emissions from stationary storage tanks containing organic liquids. Thus, EPA is finalizing the approval of the BAAQMD rule revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, EPA's general rulemaking authority, plan submissions, and enforceability guidelines. This rule is being incorporated into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment.

**DATES:** This action is effective on October 24, 1997 unless adverse or critical comments are received by September 24, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for BAAQMD Rule 8–5, Storage of Organic Liquids, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105
Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

**FOR FURTHER INFORMATION CONTACT:**
Yvonne Fong, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

**SUPPLEMENTARY INFORMATION:**

## I. Applicability

The rule being approved into the California SIP is BAAQMD Rule 8–5, Storage of Organic Liquids. This rule was submitted by the California Air Resources Board to EPA on May 24, 1994.

## II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the San Francisco Bay Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.[1]

This document addresses EPA's direct-final action for BAAQMD Rule 8–5, Storage of Organic Liquids. The BAAQMD adopted this rule on January 20, 1993. This submitted rule was found to be complete on July 14, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V;[2] and is being finalized for approval into the SIP.

BAAQMD Rule 8–5 controls emissions of VOCs from stationary storage tanks containing organic liquids. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of BAAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. In accordance with the redesignation maintenance plan and at the request of BAAQMD, EPA is incorporating this revision into the SIP.

The following is EPA's evaluation and final action for this rule.

## III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register" (EPA's 'Blue Book') and the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (April 1991), and against other EPA policies. In general, these guidance documents have been set forth to ensure that VOC and other rules are fully enforceable and strengthen or maintain the SIP.

Because BAAQMD Rule 8–5 is being incorporated into the SIP as part of the maintenance measures for the area's redesignation plan, the rule does not need to be evaluated for meeting the RACT emission limits pursuant to section 182(a) of the CAA. As an ozone maintenance measure, the rule is being evaluated against the emissions reductions assumed in the maintenance plan and the rule version currently incorporated in the SIP.

On June 10, 1992, EPA approved into the SIP a version of Rule 8–5, Storage of Organic Liquids, that had been adopted by the BAAQMD on May 4, 1988. The BAAQMD Rule 8–5 submitted on May 24, 1994 includes the following significant changes:

- Section 116 has been added to include a clarifying exemption for underground gasoline storage tanks located at dispensing facilities subject to Regulation 8, Rule 7;
- Language exempting tanks that store liquids with a true vapor pressure of 0.5 psia or less has been moved from section 101 to section 117 (rule applicability has not changed);
- The following definitions have been added to section 200: approved emission control system, degassing, external floating roof tank, internal floating roof tank, true vapor pressure, organic compound, and viewport;
- Section 303 has been added to include requirements for above ground tanks with a capacity between 37.5 $m^3$ and 75 $m^3$, storing organic liquids with a true vapor pressure greater than 1.5 psia;
- Section 400 has been modified to require periodic operator inspections, rather than simply making tanks available for APCO inspection;
- The outdated compliance schedules in sections 411 and 412 have been deleted;
- The following sections have been added: 502—tank cleaning annual source test requirement; 503—specifications for portable hydrocarbon detectors; and 605—pressure vacuum valve gas tight determination.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Rule 8–5, Storage of Organic Liquids, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and pursuant to EPA's authority under section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse

[1] The San Francisco Bay Area was redesignated to attainment and was classified by operation of law pursuant to sections 107(d) upon the date of enactment of the CAA. See 60 FR 27028 (May 22, 1995).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

or critical comments be filed. This action will be effective October 24, 1997, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 24, 1997.

**IV. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and 301 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR part 52:**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 11, 1997.

**Felicia Marcus,**

*Regional Administrator.*

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart F—California**

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by adding paragraphs (c)(197)(i)(B)(*2*) to read as follows:

**Section 52.220 Identification of plan.**

* * * * *

(197) * * *

(i) * * *

(B) * * *

(*2*) Rule 8–5, adopted on January 20, 1993.

* * * * *

[FR Doc. 97–22513 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 157–0046a; FRL–5881–1]**

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC

emissions from adhesives. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on October 24, 1997 unless adverse or critical comments are received by September 24, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

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

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

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

**SUPPLEMENTARY INFORMATION:**

## I. Applicability

The rule being approved into the California SIP, SJVUAPCD Rule 4653, Adhesives, was submitted by the California Air Resources Board to EPA on August 10, 1995.

## II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Joaquin Valley Area is classified as serious;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on August 10, 1995, including the rule being acted on in this document. This document addresses EPA's direct-final action for SJVUAPCD Rule 4653, Adhesives. The SJVUAPCD adopted Rule 4653 on April 13, 1995. This submitted rule was found to be complete on October 4, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

SJVUAPCD Rule 4653 limits the volatile organic compound (VOC) emissions resulting from the application of adhesives. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

## III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A).

There are no CTGs directly applicable to SJVUAPCD Rule 4653. Consequently, in addition to being evaluated against the general requirements of the CAA, this rule was also evaluated against "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**" (EPA's "Blue Book" referred to in footnote 1), and against other EPA policies including the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (April 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of SJVUAPCD Rule 4653, Adhesives in the SIP. The submitted rule includes the following provisions:

- A clear delineation of the rule's applicability;
- VOC content limits for adhesives, adhesive primers, and cleaning materials;

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

[2] The San Joaquin Valley Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

- Specific application techniques and good housekeeping practices;
- Requirements that persons opting to use control equipment achieve a combined control and capture efficiency of at least 85 percent and keep daily records of key operating parameters;
- Prohibition of the sale of non-compliant adhesive products within the District to persons not using add-on control and prescription that persons selling non-compliant adhesives record sales information;
- Requirements for daily records of the type and quantity of all adhesives, primers, and cleaning materials used;
- Labeling requirements for adhesive product manufacturers;
- Test methods for determining VOC content and capture and control efficiency.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD Rule 4653, Adhesives is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 24, 1997, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 24, 1997.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *D. Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 6, 1997

**David P. Howekamp,**

*Acting Regional Administrator.*

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart F—California

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by adding paragraph (c)(224)(i)(D) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(224) * * *

(i) * * *

(D) San Joaquin Valley Unified Air Pollution Control District.

*(1)* Rule 4653, adopted on April 13, 1995.

* * * * *

[FR Doc. 97–22515 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 96–257; RM–8966]**

### Radio Broadcasting Services; Cloudcroft, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Robert J. Flotte, allots Channel 250C1 to Cloudcroft, NM, as the community's second local FM service. See 62 FR 373, January 3, 1997. Channel 250C1 can be allotted to Cloudcroft in compliance with the Commission's mileage separation requirements with a site restriction of 15.9 kilometers (9.9 miles) east, at coordinates 33–00–49 NL; 105–35–16 WL, to avoid a short-spacing to Station KXKK, Channel 250C, Lordsburg, NM. Cloudcroft is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Mexican concurrence in this allotment was requested in January, 1997, but has not yet been received. Therefore, the channel has been allotted with the following interim condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement." The announced condition is a temporary measure as our engineering analysis has determined that Channel 250C1 at Cloudcroft complies with the Agreement. Therefore, once an official response from the Mexican Government has been received, the referenced condition may be removed. With this action, this proceeding is terminated.

**DATES:** Effective September 29, 1997. The window period for filing applications will open on September 29, 1997, and close on October 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96–257, adopted August 6, 1997, and released August 15, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street NW., Washington, DC 20036.

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

Radio broadcasting.

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

### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 250C1 at Cloudcroft.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97–22116 Filed 8–22–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 96–142; RM–8829 & RM–8873]**

### Radio Broadcasting Services; Woodville and St. Marks, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action in this document allots Channel 250A to Woodville, Florida, as that community's first local broadcast service, in response to a petition filed by George Roberts d/b/a Anchor Communications. The coordinates for Channel 250A are 30–17–56 and 84–07–40. There is a site restriction 11.7 kilometers (7.3 miles) east of the community. The counterproposal filed by St. Marks Broadcasting proposing the allotment of Channel 250A to St. Marks, Florida, was denied (RM–8873). With this action, this proceeding is terminated.

**DATES:** Effective September 29, 1997. The window period for filing applications for Channel 250A at Woodville, Florida, will open on September 29, 1997, and close on October 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 96–142, adopted August 6, 1997, and released August 15, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Woodville, Channel 250A.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97–22405 Filed 8–22–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MM Docket No. 92–266; FCC 96–491]**

### Cable Television Consumer Protection and Competition Act of 1992

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; establishment of effective date.

**SUMMARY:** The Commission's amendments to 47 CFR 76.922 and 76.913, which contained information collection requirements, became effective on August 13, 1997. These amendments, which were published in the **Federal Register** on February 12, 1997, relate to implementation of the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992.

**EFFECTIVE DATE:** The amendments to 47 CFR 76.922 and 76.913 published at 62 FR 6491 became effective on August 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Meryl S. Icove, Cable Services Bureau, (202) 418–7200.

**SUPPLEMENTARY INFORMATION:**

1. On December 23, 1996, the Commission adopted an order revising its rate regulation rules, a summary of which was published in the **Federal Register**. See 62 FR 6491, February 12, 1997. The Commission's rule changes that did not impose new or modified information collection requirements became effective March 14, 1997. However, because they imposed new or modified information collection requirements, the amendments to 47 CFR 76.922 and 76.913 could not become effective until approved by the Office of Management and Budget ("OMB"), and no sooner than March 14, 1997. OMB approved these rule changes on August 13, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval. The amendments to 47 CFR 76.922 and 76.913 became effective on August 13, 1997. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval.

**List of Subjects in 47 CFR Part 76**

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–22403 Filed 8–22–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 171

**[Docket No. RSPA–97–2501 (HM–221B)]**

**RIN 2137–AD04**

### Hazardous Materials: Use of Non-Specification Open-Head Fiber Drum Packagings

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

**ACTION:** Confirmation of effective date of direct final rule.

**SUMMARY:** This document confirms the October 1, 1997 effective date of the direct final rule in this rulemaking docket, published on June 2, 1997. That rule amends the Hazardous Materials Regulations (HMR) to allow the transportation of certain liquid hazardous materials in non-specification open-head fiber drums until September 30, 1999, if the fiber drums have been filled before, and are not emptied and refilled after, the expiration of the current authority for the use of these packagings.

**EFFECTIVE DATE:** The June 2, 1997 direct final rule published at 62 FR 29673 is effective October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–00001; telephone 202–366–4400.

**SUPPLEMENTARY INFORMATION:** On June 2, 1997, RSPA published in the **Federal Register** a direct final rule adding a new paragraph 49 CFR 171.14(c)(2) to the HMR (49 CFR Parts 171–180) providing as follows:

(2) A non-specification fiber drum with a removable head authorized by paragraph (c)(1) of this section may be offered for transportation and transported domestically prior to October 1, 1999, if it—

(i) Was filled with an authorized hazardous material prior to the expiration of the authority in paragraph (c)(1) of this section; and

(ii) Is not emptied and refilled after the expiration of the authority in paragraph (c)(1) of this section. 62 FR 29676. The reason and basis for the direct final rule were set forth in the preamble.

RSPA stated that this direct final rule would become effective on October 1, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by August 1, 1997. RSPA also stated that it would publish in the **Federal Register** a timely document confirming the effective date of this direct final rule. 62 FR 29673.

This document confirms that, because no adverse comment or notice of intent to file an adverse comment was received by August 1, 1997, the effective date of the June 2, 1997 direct final rule is October 1, 1997.

Issued in Washington, DC on August 19, 1997.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 97–22493 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–60–P

# Proposed Rules

Federal Register
Vol. 62, No. 164
Monday, August 25, 1997

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Ch. I

### Issuance of Report on the NRC Regulatory Agenda

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of NRC Regulatory Agenda.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued the *NRC Regulatory Agenda* for the period covering January through June of 1997. This agenda provides the public with information about NRC's rulemaking activities. The *NRC Regulatory Agenda* is a compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

**ADDRESSES:** A copy of this report, designated *NRC Regulatory Agenda* (NUREG–0936), Vol. 16, No. 1, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. In addition, the U.S. Government Printing Office (GPO) sells the *NRC Regulatory Agenda*. To purchase it, a customer may call (202) 512–1800 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–7162, toll-free number (800) 368–5642.

Dated at Rockville, MD., this 20th day of August 1997.

For the Nuclear Regulatory Commission.

**Sarah Wigginton,**

*Acting Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 97–22486 Filed 8–22–97; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket No. CAS–RM–79–102]**

### Energy Conservation Program for Consumer Products: Notice of Public Workshop on Test Procedures for Central Air Conditioners, Including Heat Pumps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Public Workshop.

**SUMMARY:** The Department of Energy (Department or DOE) today gives notice that it will convene a public workshop to discuss issues and gather information related to test procedures for central air conditioners and heat pumps.

**DATES:** The public workshop will be held on Thursday, September 25, 1997, from 9 a.m. to 4 p.m.

**ADDRESSES:** The workshop will be held at the U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of the transcript of the public workshop, public comments received, and this notice may be read at the Department of Energy, Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. If you are planning to attend this workshop and would like to receive material prepared for the workshop, please contact Ms. Sandy Beall, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–7574; Telefax: (202) 586–4617.

**FOR FURTHER INFORMATION CONTACT:**

Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611.

Ms. Sandy Beall, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

To develop a proposed rule revising the test procedures for central air conditioners and heat pumps, the Department is convening a workshop to receive and discuss public comments on a number of technical issues. This is a proposed agenda for the workshop:

**2. Preliminary Agenda**

9 a.m. to 10:45 a.m.

Should the DOE test procedure be expanded to cover any of the following equipment categories?

—Triple capacity heat pumps
—Multiple-split heat pumps
—Two-capacity heat pumps with variable-speed indoor fans that are modulated to best match the building load
—Single-speed heat pumps with variable-speed indoor fans that are modulated to best match the building load
—No-defrost heat pumps
—Heat pumps that incorporate a heat comfort controller
—Two-capacity heat pumps for an application where the unit is sized to meet the space cooling load at 95° F while operating at low capacity
—Multi-capacity units having a "turbo" cooling mode
—Others?

Break

11 a.m. to 11:30 a.m.

Test method for units having a variable-speed constant CFM blower
—with indoor fan operating versus not operating
—tolerances on air volume rate if tested with the indoor fan operating

11:30 a.m. to 12:15 p.m.

Capacity adjustments

—criteria for taking the demand defrost credit (defrost adjustment factor)

—barometric pressure adjustment(s): needed? If so, what values?

12:15 p.m. to 1:15 p.m.

Lunch (on your own)

1:15 p.m. to 2:45 p.m.

Lab Set-up and Testing Issues

—should an outdoor wet bulb temperature be specified when testing packaged systems where the indoor coil is located in the outdoor chamber?

—discussion of proposed Section 4.2.4, "Exclusion of special setup requirements if stated in the manufacturers installation manual"

—electrical energy/power measurements

—accuracy of dry bulb temperature measurements

—pretest intervals

—manifolded static pressure taps

2:45 p.m. to 3 p.m.

Break

3 p.m. to 4 p.m.

Accounting for time delay relays within mixed system rating procedures

4 p.m. to 4:45 p.m.

Metrification of the DOE test procedure

—brief status report

—what issues should be raised during upcoming revisions to ISO Standards for ducted (Std. 13253) and non-ducted (Std. 5151) units?

Please notify Sandy Beall or Michael Raymond at the address listed in the **FOR FURTHER INFORMATION CONTACT** section if you intend to attend the workshop, if you wish to receive material prepared for the workshop, or if you wish to be added to the DOE mailing list for receipt of future notices and information concerning central air conditioner and heat pump test procedures.

Issued in Washington, DC, on August 19, 1997.

**Joseph J. Romm,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 97–22485 Filed 8–22–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket No. EE–RM–97–500]**

**RIN 1904–AA75**

## Energy Conservation Program for Consumer Products: Energy Conservation Standards for Fluorescent Lamp Ballasts

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of extension of the comment period for the "Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts."

**SUMMARY:** Today's notice is to extend the comment period for the "Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts." Due to requests from interested parties, the Department is extending the comment period to October 2, 1997.

**DATES:** Comments in response to this document must be received by October 2, 1997.

**ADDRESSES:** Copies of the report entitled "Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts" may be obtained from Sandy Beall at: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574. This document may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Written comments are welcomed. Please submit 10 copies to: Sandra Beall, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Ballast Docket No. EE–RM–97–500," EE–43, Room 1J–018, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Anthony T. Balducci, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, Phone: (202) 586–8459, Fax: (202) 586–4617, E-mail: anthony.balducci@hq.doe.gov

Ms. Sandy Beall, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, Phone: (202) 586–7574, Fax: (202) 586–4617.

**SUPPLEMENTARY INFORMATION:**

The Department published a Notice of Availability for the "Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts" (62 FR 38222, July 17, 1997) and requested comments on the draft report and the questions contained in the notice.

DOE has received several verbal requests to extend the comment period due to the size of the draft report and the time frame of the comment period.

Due to the comments received, the Department is extending the comment period to October 2, 1997.

Issued in Washington, DC, on August 19, 1997.

**Joseph J. Romm,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 97–22484 Filed 8–22–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–NM–161–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes. This proposal would require removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent wear of the attachment pins, which could result in collapse of the main landing gear.

**DATES:** Comments must be received by September 29, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

**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 97–NM–161–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. 97–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 series airplanes. The DGAC advises that failed main landing gear (MLG) pins have been found during routine inspections. The failure has been traced to inadequate quality control of the MLG attachment pins during manufacture. This condition, if not corrected, could result in collapse of the MLG.

**Explanation of Relevant Service Information**

Aerospatiale has issued Service Bulletin No. ATR42–32–0081, and No. ATR42–32–0082, both dated July 16, 1996, which describe procedures for removal of certain attachment pins of the MLG, and replacement of the pins with serviceable pins. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 96–131–064(B), dated July 3, 1996, in order to assure the continued airworthiness of these airplanes in France. The Aerospatiale service bulletins reference Messier-Dowty Service Bulletin No. 631–32–127, Revision 1, dated October 22, 1996, and No. 631–32–128, dated November 15, 1996, as additional sources of service information for accomplishment of these actions.

**FAA's Conclusions**

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 (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. 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.

**Explanation of Requirements of Proposed Rule**

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 require accomplishment of the actions specified in the Aerospatiale and Messier-Dowty service bulletins described previously.

**Cost Impact**

The FAA estimates that 88 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 45 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $237,600, or $2,700 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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 "significant regulatory action" under Executive Order 12866; (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 part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§39.13 [Amended]**

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

**Aerospatiale:** Docket 97-NM-161-AD.

*Applicability:* Model ATR42 series airplanes as identified in Aerospatiale Service Bulletin No. ATR42–32–0081, dated July 16, 1996, and Aerospatiale Service Bulletin No. ATR42–32–0082, dated July 16, 1996; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent wear of the landing gear attachment pins, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the MLG leg hinge pins and side brace assembly center pins having the part numbers (P/N) specified in paragraph C. (2) of Aerospatiale Service Bulletin No. ATR42–32–0081, dated July 16, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–127, Revision 1, dated October 22, 1996.

(b) Prior to the accumulation of 15,000 landings since the last overhaul of the MLG, or within 8 years time-in-service since the last overhaul of the MLG, whichever occurs first, remove the MLG swinging lever/barrel pins and shock absorber universal joint hinge pins having the P/N's specified in paragraph C. (2) of Aerospatiale Service Bulletin No. ATR42–32–0082, dated July 16, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–128, dated November 15, 1996.

**Note 2:** Serviceable pins include those that have been removed, inspected and marked with green paint in accordance with Messier-Dowty Service Bulletin No. 631–32–127, Revision 1, dated October 22, 1996; or Messier-Dowty Service Bulletin No. 631–32–128, dated November 15, 1996; as applicable.

(c) As of the effective date of this AD, no person shall install any MLG pin having a part number identified in Aerospatiale Service Bulletin No. ATR42–32–0081, dated July 16, 1996, or Aerospatiale Service Bulletin No. ATR42–32–0082, dated July 16, 1996, on any airplane unless that pin is considered to be serviceable in accordance with the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 14, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–22043 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 96–NM–189–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require a detailed visual inspection of the flap drive torque tubes in the wing root area to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes; and follow-on repetitive inspections or corrective action, if necessary. Accomplishment of certain replacements and modifications would constitute terminating action for the repetitive inspections. This proposal is prompted by reports of inadequate clearance between flap drive torque tubes and surrounding structures, and possible scoring damage to the tubes. The actions specified by the proposed AD are intended to prevent failure of the torque tubes, which could result in an asymmetric flap condition and reduced controllability of the airplane.

**DATES:** Comments must be received by October 6, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** *William Schroeder,* Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; *telephone* (425) 227–2148; *fax* (425) 227–1149.

**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 96–NM–189–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. 96–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that, following reports of restrictions of flight control, a zonal survey was conducted of all flying control circuits on these airplanes. An area of reduced clearance, which was identified between the wing flap control system and wing center section structure, was found to affect the aluminum flap drive torque tubes. Such inadequate clearance and consequent scoring damage could lead to failure of the torque tubes, and result in an asymmetric flap condition and reduced controllability of the airplane.

**Explanation of Relevant Service Information**

The manufacturer has issued Service Bulletin ATP–27–80, dated April 23, 1996, which describes procedures for a detailed visual inspection of the flap drive torque tubes in the wing root area to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes; and follow-on repetitive inspections, if necessary. For certain cases, the service bulletin also describes procedures for the replacement of damaged torque tubes with new tubes and modification of the surrounding structure to gain adequate clearance. Accomplishment of such replacement and modification would eliminate the need for the repetitive inspections. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 003–04–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

**FAA's Conclusions**

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. 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.

**Explanation of Requirements of Proposed Rule**

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 require a detailed visual inspection of the flap drive torque tubes in the wing root area to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes; and follow-on repetitive inspections, if necessary. For certain cases, this proposal also would require the replacement of damaged torque tubes with new tubes and modification of the surrounding structure to gain adequate clearance. Accomplishment of the modification would constitute terminating action for the repetitive inspection requirement of this AD. These actions would be required to be accomplished in accordance with the service bulletin described previously.

**Differences Between Proposed Rule and Service Bulletins**

Operators should note that Jetstream Service Bulletin ATP–27–80, dated April 23, 1996, differs from this AD in two respects:

1. The service bulletin recommends that, if inadequate clearance exists between any flap drive torque tube and surrounding structure in the wing root area, and there is no scoring damage to the tubes, the detailed repetitive visual inspections of the tubes, at intervals not to exceed 250 hours time-in-service, may continue indefinitely. However, the proposed AD would require modification to achieve adequate clearance within 2,000 hours time-in-service after the initial inspection. The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

2. The service bulletin recommends that, if both torque tubes on the same side are damaged, and the scoring is within the maximum allowable damage limits specified, continued flight is allowed up to 250 hours time-in-service before new torque tubes are installed. However, the proposed AD would require replacing at least one of the torque tubes with a new tube prior to further flight. The FAA has determined that failure of both torque tubes on one side during the same flight could result in an asymmetric flap condition and reduced controllability of the airplane. The FAA also has determined that if both torque tubes are damaged, even though the damage on either torque tube is within the allowable limits specified in the service bulletin during repetitive inspections, undetected residual damage could propagate unexpectedly and result in the failure of a torque tube. Therefore, considering the possible catastrophic results of an asymmetric flap condition, this proposed AD requires that at least one of the torque tubes on the same side remains undamaged at all times.

**Cost Impact**

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $600, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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 "significant regulatory action" under Executive Order 12866; (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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

**British Aerospace Regional Aircraft**
[Formerly Jetstream Aircraft Limited, ritish Aerospace (Commercial Aircraft) Limited]: Docket 96–NM–189–AD.

*Applicability:* BAe Model ATP airplanes, constructor numbers 2002 through 2063 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the torque tubes, which could result in an asymmetric flap condition and reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, conduct a detailed visual inspection of the flap drive torque tubes in the left and right wing root areas to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes, in accordance with Jetstream Service Bulletin ATP–27–80, dated April 23, 1996.

(1) If adequate clearance exists between all flap drive torque tubes and surrounding structure at the sites specified in the service bulletin, with no scoring damage to any of the tubes, no further action is required by this AD.

(2) If inadequate clearance exists between any flap drive torque tube and surrounding structure at the sites specified in the service bulletin, with no scoring damage to the tubes: Accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) At intervals not to exceed 250 hours time-in-service, repeat the detailed visual inspections required by paragraph (a) of this AD.

(ii) Within 2,000 hours time-in-service after the initial inspection required by paragraph (a) of this AD, modify the structure to gain the required minimum clearance in accordance with the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirement of paragraph (a)(2)(ii) of this AD.

(3) If any scoring damage to the torque tubes is detected, accomplish the requirements specified in paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this AD, as applicable, in accordance with the service bulletin, and at the time specified in the applicable paragraph.

(i) If only one torque tube on one side or both sides of the airplane is damaged, and the scoring is within the maximum allowable damage limits in the service bulletin: Within 250 hours time-in-service after any inspection required by this AD in which the damage was initially detected, modify the surrounding structure to gain the required minimum clearance and install a new torque tube.

(ii) If both torque tubes on the same side of the airplane are damaged, and the scoring is within the maximum allowable damage limits in the service bulletin: Prior to further flight after any inspection required by this AD in which damage was initially detected, modify the surrounding structure to gain the required minimum clearance and replace at least one of the damaged torque tubes with a new torque tube. Within 250 hours time-in-service after any inspection in which damage was initially detected, replace the remaining damaged torque tube with a new torque tube.

(iii) If any torque tube is damaged, and the scoring is more than the allowable damage limits described in the service bulletin: Prior to further flight, modify the surrounding structure to gain the required minimum clearance and replace the damaged tube(s) with a new torque tube(s).

(b) Accomplishment of the modification to gain the required minimum clearance between the torque tubes and surrounding structure and the replacement of damaged torque tube(s) with a new torque tube(s) constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1997.

**S. R. Miller,**

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

[FR Doc. 97–22487 Filed 8–22–97; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 97–AGL–34]**

## Proposed Modification of the Legal Description of Class D Airspace; St. Paul, MN, St. Paul Downtown Holman Field

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to change the legal description of the Class D airspace area at St. Paul Downtown Holman Field (STP), St. Paul, NM. The existing legal description of the airspace area establishes the vertical limit of the airspace at 3,200 feet Mean Sea Level (MSL), excluding that airspace within

the Minneapolis (MSP), MN, Class B airspace area; however, all airspace from 3,000 MSL to 3,200 MSL inclusive within the lateral boundaries of the STP Class D airspace area is part of the MSP Class B airspace area. Consequently, no portion of the STP Class D airspace area actually exists at or above 3,000 MSL. This action only proposes to change the legal description of the STP Class D airspace area to reflect the actual existing vertical limit of the airspace. This action does not propose to change the actual dimensions of operating requirements of that airspace. The intended effect of this action would be to eliminate a potential source of confusion.

**DATES:** Comments must be received on or before October 3, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel AGL–7, Rules Docket No. 97–AGL–34, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** *Michelle M Behm,* Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, *telephone* (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–34." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, *Attention:* Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the legal description of the STP Class D airspace area at St. Paul, MN. The existing legal description of the STP Class D airspace area establishes the vertical limit of the airspace at 3,200 MSL, but specifically excludes that airspace which coincides with the MSP Class B airspace area. However, at no point within the lateral boundaries of the STP Class D airspace area is the floor of the MSP Class B airspace higher than 3,000 MSL. Consequently, the highest vertical limit of the STP Class D airspace area is up to, but does not include, 3,000 MSL. The published 3,200 MSL vertical limit, therefore, does not reflect the true vertical limit of the airspace, and may serve as a source of confusion for pilots. This action proposes to revise the legal description of the STP Class D airspace area to reflect the actual existing vertical limit of the airspace. The intended effect of this action would be to eliminate a potential source of confusion. The area would be depicted on appropriate aeronautical charts. Class D airspace designations for specified airspace within which all aircraft operators are subject to operating rules and equipment requirements of Part 91 of the Federal Aviation Regulations (14 CFR 91.129) are published in paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 5000 Class D airspace*

* * * * *

**AGL MN D St. Paul, MN [Revised]**

St. Paul Downtown Holman Field, MN

(Lat. 44°56'04" N, long. 93°03'36" W)

South St. Paul Municipal Richard E. Fleming Field, MN

(Lat. 44°51'26" N, long. 93°01'59" W)

That airspace extending upward from the surface to, but not including, 3,000 feet MSL, within a 4.1-mile radius of St. Paul Downtown Holman Field, excluding that airspace within the Minneapolis, MN, Class B airspace area, and excluding the area within a 1-mile radius of the South St. Paul Municipal Richard E. Fleming Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Des Plaines, Illinois on August 4, 1997.

**Maureen Woods,**

*Manager, Air Traffic Division.*

[FR Doc. 97–22502 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 97–AGL–30]**

### Modification of Class E Airspace; Rochester, IN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Rochester, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 29 has been developed for Fulton County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This proposal would increase the radius of the existing Class E airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before September 25, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–30." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Rochester, IN. This proposal would provide adequate Class E airspace for operators executing the GPS Runway 29 SIAP at Fulton County Airport by increasing the radius of the existing Class E airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain airspace executing the approach. The intended effect of this action is to provide segregation of airspace using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

**PART 71—[AMENDED]**

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

**AGL IN E5 Rochester, IN [Revised]**

Rochester, Fulton County Airport, IN
(lat. 41°03'57"N, long. 86°10'58"W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Fulton County Airport.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1997.

**Maureen Woods,**

*Manager, Air Traffic Division.*

[FR Doc. 97–22499 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 97–AGL–33]**

## Modification of Class E Airspace; Bloomington, IL

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Bloomington, IL. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 20 has been developed for Bloomington/Normal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This proposal will increase the radius of the existing Class E airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before September 26, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–33, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–33." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Bloomington, IL. This proposal would provide adequate Class E airspace for operators executing the ILS Runway 20 SIAP at Bloomington/Normal Airport by increasing the radius of the existing Class E airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

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

**List of Subjects in 14 CFR part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

**PART 71—[Amended]**

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

**AGL IL E5 Bloomington, IL [Revised]**

Bloomington/Normal Airport, IL
(Lat. 40°28′44″ N, long. 88°55′08″ W)

That airspace extending upward from 700 feet above the surface within a 7.3–mile radius of the Bloomington/Normal Airport.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1997.

**Maureen Woods,**

*Manager, Air Traffic Division.*

[FR Doc. 97–22496 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 97–AGL–32]**

## Removal of Class E Airspace; Minocqua-Woodruff, WI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to remove Class E airspace at Minocqua-Woodruff, WI. This airspace is being removed because the weather observation requirements for a controlled airspace surface area are no longer being met for the Lakeland/Noble F. Lee Memorial Field. The intended effect of this proposal is to provide an accurate description of controlled airspace for Minocqua-Woodruff, WI.

**DATES:** Comments must be received on or before September 26, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–32, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–32." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove Class E airspace at Minocqua-Woodruff, WI. This airspace is removed because the weather observation requirements for a controlled airspace surface area are no longer being met for the Lakeland/Noble F. Lee Memorial Field. The intended effect of this action is to provide an accurate description of controlled airspace for Minocqua-Woodruff, WI. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document would be removed subsequently from the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

**PART 71—[AMENDED]**

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

**AGL WI E2 Minocqua-Woodruff, WI [Removed]**

* * * * *

Issued in Des Plaines, Illinois on July 29, 1997.

**Maureen Woods,**

*Manager, Air Traffic Division.*

[FR Doc. 97–22498 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

**[VA–110–FOR]**

**Virginia Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control Reclamation Act of 1977 (SMCRA). The proposed amendment changes the Virginia Coal Surface Mining Control and Reclamation Act to add "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. The amendment is intended to revise the State program to be consistent with the Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., on September 24, 1997. If requested, a public hearing on the proposed amendment will be held on September 19, 1997. Requests to speak at the hearing must be received by 4:00 p.m., on September 9, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303, or

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Cap, Virginia 24219, Telephone: (703) 523–8100.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Virginia Program**

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

**II. Discussion of the Proposed Amendment**

By letter dated July 31, 1997 (Administrative Record No. VA–921), the Virginia Department of Mines, Minerals and Energy (DMME) stated that the Virginia legislature has amended, effective July 1, 1997, the Virginia Coal Surface Mining Control and Reclamation Act at Section 45.1–241(c). The amendment adds "letter of credit" as an acceptable form of collateral bond that the DMME may accept to satisfy the performance bonding requirements of the Virginia Act.

The amended statute specifies qualifying criteria that are intended to be effectively consistent with the letter of credit criteria contained in the Federal regulations at 30 CFR 800.21(b). The amendment also imposes conditions upon a letter of credit that are intended to be consistent with the Federal regulations at 30 CFR 800.16.

The proposed amendments are as follows:

Section 45.1–241(c) is amended by adding the following language to the existing language:

The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. Each letter of credit can only be issued up to the amount which can be insured by the FDIC. Any letter of credit issued by a non-Virginia lending institution shall be confirmed by an approved Virginia lending institution. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's

charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace the bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on September 9, 1997. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**IV. Procedural Determinations**

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rules does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 8, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97–22415 Filed 8–22–97; 8:45 am]

BILLING CODE 4310–05–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

**[FRL–5880–7]**

**RIN 2060–AH27**

## Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Methyl Acetate

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to revise EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for any Federal implementation plan (FIP) for an ozone nonattainment area. This proposed revision would add methyl acetate to the list of compounds excluded from the definition of VOC on the basis that this compound has negligible contribution to tropospheric ozone formation. This compound has potential for use as a solvent in paints, inks and adhesives. Methyl acetate appears to be promising as a solvent for wood furniture coatings.

**DATES:** Comments on this proposal must be received by September 24, 1997. Requests for a hearing must be submitted by September 24, 1997.

**ADDRESSES:** Comments should be submitted in duplicate (if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–32, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Public Hearing: If anyone contacts EPA requesting a public hearing, it will be held at Research Triangle Park, NC. Persons wishing to request a public hearing/wanting to attend the hearing or wishing to present oral testimony should notify Mr. William Johnson, Air Quality Strategies and Standards Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5245. The EPA will publish notice of a hearing, if requested, in the **Federal Register**. Any hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below.

The EPA has established a public docket for this action, A–97–32, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, (6102), 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245. Interested persons may call Mr. Johnson to see if a hearing will be held and the date and location of any hearing.

**SUPPLEMENTARY INFORMATION:**

*Regulated entities.* Entities potentially regulated by this action are those which use and emit VOC and States which have programs to control VOC emissions.

| Category | Examples of regulated entities |
|---|---|
| Industry | Industries that manufacture and use paints, inks and adhesives. |
| States | States which have regulations to control volatile organic compounds. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### I. Background

On July 30, 1996, Eastman Chemical Company submitted a petition to the EPA which requested that methyl acetate be added to the list of compounds which are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s). The petitioner based the request on a comparison of the reactivity of methyl acetate to that of ethane which has already been listed since 1977 as having negligible reactivity. In a number of cases in the past, EPA has accepted compounds with lower reactivity than ethane as negligibly reactive (62 FR 12583, 61 FR 52848, and 61 FR 4588).

One common way to evaluate reactivity is to look at the reaction rate constant ($k_{OH}$) value which is a measure of the rate with which the compound reacts with hydroxyl (OH) radical. This reaction is usually the first step in a series through which the compound breaks down and participates in increased ozone formation. If the OH reaction step is slow, the compound usually will not react rapidly to form ozone. A $k_{OH}$ value higher than that of ethane indicates that the compound reacts rapidly with OH. The high $k_{OH}$ value generally indicates a high ozone formation rate, but this may or may not be true depending on how the VOC behaves subsequent to the OH attack.

The best available $k_{OH}$ value available for methyl acetate is $3.4 \times 10^{-13}$ cm$^3$ molecule$^{-1}$ sec$^{-1}$ which is larger than the $k_{OH}$ value for ethane (i.e., $2.4 \times 10^{-13}$ cm$^3$ molecule$^{-1}$ sec$^{-1}$). This seems to indicate that methyl acetate is more reactive than ethane, but additional studies have shown that this is not actually the case. These studies, which were carried out by Dr. William P. L. Carter of the University of California at Riverside, indicate that the reactivity of methyl acetate is comparable to that of ethane.

Based on literature information, Dr. Carter conceived two alternative mechanisms for the atmospheric photooxidation of methyl acetate—one leading to a higher ozone yield and one to a lower yield—and tested them against his smog chamber data. The mechanism that showed the best agreement with his data was the one leading to low ozone yield. Using that mechanism in a mechanistic model, Dr. Carter computed the reactivity (i.e., maximum incremental reactivity) of methyl acetate relative to that of ethane for 39 different sets of urban conditions. Results showed methyl acetate reactivity to be significantly lower (on an ozone-formed, per gram, VOC basis) than that of ethane for all sets of conditions. The average value is only 40 percent of that of ethane. Based on these results, Dr. Carter concluded that methyl acetate is less reactive than ethane.

Some uncertainties are due to the assumptions imbedded in the mechanism used by Dr. Carter to compute reactivities. Dr. Carter made one assumption concerning the nature of the main intermediate product from the photooxidation of methyl acetate, and another one concerning the atmospheric chemistry of that product. While the assumptions are consistent with existing knowledge, and are supported also by the good agreement between mechanism and smog chamber data, they were, nevertheless, accepted without direct experimental verification (e.g., the analytical system used was not sufficient for identifying the "assumed" intermediate product), and are, therefore, subject to some uncertainty.

Even so, the data presented are sufficiently valid to strongly support acceptance of the petition.

As mentioned above, the data presented in Dr. Carter's study are reported on a weight basis, i.e., grams of ozone-formed, per gram, of VOC reacted. In one case in the past (60 FR 31633) where maximum incremental reactivity data were presented, EPA has examined a reactivity petition solely on a weight basis. However, for the methyl acetate petition, EPA has also looked at the data on a mole basis, i.e., amount of ozone-formed, per mole, of VOC reacted. Use of a per mole basis is consistent with previous reactivity determinations based on $k_{OH}$ values expressed in units of $cm^3$ $molecule^{-1}$ $sec^{-1}$. This is also consistent with the experimental work, done on a mole basis, which was used to originally list ethane as negligibly reactive. The choice of weight basis versus mole basis is significant. Given the relative low molecular weight of ethane, use of the per gram basis tends to result in more VOC (higher molecular weight ones) falling into the "negligibly reactive" class relative to the per mole basis.

On a mole basis, the average reactivity value of methyl acetate for the 39 cities is lower than that for ethane. In 28 out of the 39 cases, methyl acetate's reactivity is less than that of ethane. Based on these results, EPA concludes that the existing scientific evidence does not support a methyl acetate reactivity higher than that of ethane.

## II. Proposed Action

Today's proposed action is based on EPA's review of the material in Docket No. A–97–32. The EPA hereby proposes to amend its definition of VOC at 40 CFR 51.100(s) to exclude methyl acetate as a VOC for ozone SIP and ozone control for purposes of attaining the ozone NAAQS. The revised definition will also apply for purposes of any FIP for ozone nonattainment areas (40 CFR 52.741(a)(3)). States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, if this action is made final, States should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy.

## III. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principle purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and, (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A)).

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### *C. Unfunded Mandates Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgation of an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule, unless EPA publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments including tribal governments, it must have developed, under section 203 of the UMRA, a small government plan which informs, educates and advises small governments on compliance with the regulatory requirements. Finally, section 204 provides that for any proposed or final rule that imposes a mandate on a State, local or tribal government of $100 million or more annually, the Agency must provide an opportunity for such governmental entities to provide input in development of the proposed rule.

Since today's rulemaking is deregulatory in nature and does not impose any mandate on governmental entities or the private sector, EPA has determined that sections 202, 203, 204 and 205 of the UMRA do not apply to this action.

### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA analysis in those instances where the regulation would impose a substantial impact on a significant number of small entities. Because this proposed rulemaking imposes no adverse economic impacts, an analysis has not been conducted. Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant impact on a substantial number of small entities because no additional costs will be incurred.

### *E. Paperwork Reduction Act*

This proposed rule does not change any information collection requirements subject to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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

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

Dated: August 18, 1997.

**Carol M. Browner,**

*Administrator.*

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS.

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 51.100 is proposed to be amended by revising paragraph (5) introductory text and paragraph (s)(1) to read as follows:

**§ 51.100 Definitions.**

* * * * *

(s) *Volatile organic compounds (VOC)* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC–225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC–225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43–10mee); difluoromethane (HFC–32); ethylfluoride (HFC–161); 1,1,1,3,3,3-hexafluoropropane (HFC–236fa); 1,1,2,2,3-pentafluoropropane (HFC–245ca); 1,1,2,3,3-pentafluoropropane (HFC–245ea); 1,1,1,2,3-pentafluoropropane (HFC–245eb); 1,1,1,3,3-pentafluoropropane (HFC–245fa); 1,1,1,2,3,3-hexafluoropropane (HFC–236ea); 1,1,1,3,3-pentafluorobutane (HFC–365mfc); chlorofluoromethane (HCFC–31); 1 chloro-1-fluoroethane (HCFC–151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC–123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

* * * * *

[FR Doc. 97–22509 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OH104–1B; FRL–5877–8]**

### Approval and Promulgation of State Implementation Plan; Ohio

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) is proposing to approve a June 10, 1997, request from Ohio, for a State Implementation Plan (SIP) maintenance plan revision for the following areas: Toledo area (including Lucas and Wood counties), the Cleveland-Akron-Lorain area (including Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage counties), and the Dayton-Springfield area (including Montgomery, Clark, Greene, and Miami counties). The maintenance plan revisions are requesting to allocate to the mobile source emissions budget for transportation conformity a portion of the existing "Safety Margins." The safety margin is the difference between the attainment inventory level of the total emissions and the projected levels of the total emissions in the final year of the maintenance plan.

**DATES:** Written comments on this proposed action must be received by September 24, 1997.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the requests are available for inspection at the following address: (Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.) USEPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen Oxides, Transportation conformity.

Dated: August 8, 1997.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 97–22068 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 034–0049b; FRL–5880–5]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from the storage of organic liquids.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by September 24, 1997.

**ADDRESSES:** Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of BAAQMD Rule 8–5 are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

**SUPPLEMENTARY INFORMATION:** This document concerns Bay Area Air Quality Management District Rule 8–5, Storage of Organic Liquids, submitted to EPA on May 24, 1994 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: August 11, 1997.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 97–22514 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 157–0046b; FRL–5881–2]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from adhesives.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by September 24, 1997.

**ADDRESSES:** Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of this rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

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

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

**SUPPLEMENTARY INFORMATION:** This document concerns San Joaquin Valley Unified Air Pollution Control District Rule 4653, Adhesives, submitted to EPA on August 10, 1995 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: August 6, 1997.

**David P. Howekamp,**

*Acting Regional Administrator.*

[FR Doc. 97–22516 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[AD–FRL–5879–5]**

**RIN 2016–AD04**

### Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources: Large Municipal Waste Combustion Units

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to amend the emission guidelines (subpart Cb) and the standards of performance (subpart Eb) for municipal waste combustion (MWC) units. These proposed amendments are companion amendments to the court-ordered remand amendments published elsewhere in this **Federal Register**. These proposed amendments would improve the clarity of subparts Cb and Eb, and would make technical corrections that have been brought to EPA's attention since the December 19, 1995 promulgation.

**DATES:** Comments must be received on or before September 24, 1997. Additionally, a hearing will be convened if requests to speak are received by September 9, 1997. If requests to speak are received, the hearing will take place on September 16, 1997 beginning at 10:00 a.m. A message regarding the status of the public hearing may be accessed by calling (919) 541–5264.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket Number A–90–45/ Section VIII–E, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Note that this is a different docket section number than that specified for comments on the court-related amendments included in a separate notice in today's **Federal Register**. Refer to **SUPPLEMENTARY INFORMATION** for information regarding electronic submittal of comments.

*Public Hearing.* If a public hearing is held, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby. Persons interested in presenting oral testimony should notify Ms. Donna Collins, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578. The final meeting status and location can be determined by calling (919) 541–5264.

*Docket.* Docket Nos. A–90–45 and A–89–08, containing supporting information for this rulemaking, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** If no significant material adverse comments are received on these proposed amendments by the specified date, no further activity is contemplated in relation to this proposal, and the companion direct final rule (see the final rules section of this **Federal Register**) will automatically become effective on the date specified therein. If significant material adverse comments are received on this proposal, the companion direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposal. Any parties interested in commenting should do so during this comment period.

The regulatory text for the proposed amendments is the same as the regulatory text for the direct final rule; the text is being published with the companion direct final rule and is incorporated by reference herein. In the regulatory text, the effective dates and the compliance dates are keyed to the promulgation date for both the guidelines and the standards. In the regulatory text of the guidelines, the State plan submittal dates and required final compliance dates are also dependent upon the promulgation date of these amendments. Therefore, if EPA were to withdraw the direct final rule as a result of comments on this proposal, the aforementioned dates would be revised to reflect the subsequent final promulgation date.

For further supplementary information, the detailed rationale, and the specific amendments being proposed, see the information provided in the companion direct final rule in the direct final rules section of this issue of the **Federal Register**.

**Electronic Submittal of Comments**

Comments and data may be submitted in hard copy or electronically. Electronic submittals should be sent to A-and-R-Docket@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Comments and data will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All comments and data for this proposal, whether in paper form or in electronic forms such as through e-mail or on disk, must be identified by the docket number A–90–45/Section VIII–E.

**Executive Order 12866 Review**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1995 guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405). The amendments proposed today would not result in any additional control requirements and this regulatory action is considered "not significant" under Executive Order 12866.

**Unfunded Mandates Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (see 60 FR 65405–65412).

The EPA has determined that the proposed amendments do not include any new Federal mandate. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

**Regulatory Flexibility Act (RFA)**

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated standards and guidelines and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The rules proposed today would not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the guidelines and standards will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 97–22372 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD–FRL–5880–3]**

**RIN 2016–AD04**

## Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources: Large Municipal Waste Combustion Units

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

**ACTION:** Proposed rule.

**SUMMARY:** On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act, EPA promulgated emission guidelines applicable to existing municipal waste combustor (MWC) units and new source performance standards applicable to new MWC units. The guidelines and standards are codified at 40 CFR Part 60, subparts Cb and Eb, respectively. *See* 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with the capacity to combust less than or equal to 250 tons per day of municipal solid waste (MSW), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb apply only to MWC units with the capacity to combust more than 250 tons per day of MSW per unit (large MWC units).

This notice proposes to amend the guidelines and the standards for MWC units to make them consistent with the *Davis* decision and subsequent court vacatur order. The guidelines and standards proposed for amendment have remained in effect for large MWC units since December 19, 1995 because the court did not vacate or stay the rules as they apply to these units. They will remain in effect during proposal and promulgation of these amendments.

The amended guidelines and standards would result in the 1995 rule being applicable only to MWC units with the capacity to combust greater than 250 tons per day of MSW per unit. In this document, these units are referred to as large MWC units or large MWC's.

The proposed amendments would affect the applicability of the guidelines and standards, and add supplemental emission limits for four pollutants (hydrogen chloride, sulfur dioxide, nitrogen oxides, and lead) to the guidelines. The proposed amendments would not add any additional emission limits to the standards.

The 1995 guidelines and standards applied to MWC units at plants greater than 35 megagrams per day combustion capacity (approximately 39 tons per day). Because the proposed amendments would restrict coverage of the 1995 guidelines and standards to only MWC units with combustion capacities greater than 250 tons per day consistent with the *Davis* decision, and because no petitions to review the 1995 rules as they applied to large MWC units were filed, the Agency does not anticipate receiving adverse comments. Consequently, in this issue of the **Federal Register**, a companion direct final rule is being published. If no significant material adverse comments are received on this proposal by the date specified below, no further action will be taken with respect to this proposal and the direct final rule will become final. The regulatory text for this proposal is the same as the regulatory text for the companion direct final rule which can be found in the final rules section of this **Federal Register**.

**DATES:** Comments must be received on or before September 24, 1997. Additionally, a hearing will be convened if requests to speak are received by September 9, 1997. If requests to speak are received, the hearing will take place on September 16, 1997 beginning at 10:00 a.m. A message regarding the status of the public hearing may be accessed by calling (919) 541–5264.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket Number A–90–45/ Section VIII–D, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Note that this is a different docket section number than that specified for comments on the technical amendments included elsewhere in a notice in today's **Federal Register**. Refer to **SUPPLEMENTARY INFORMATION** for information regarding electronic submittal of comments.

*Public Hearing.* If a public hearing is held, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby. Persons interested in presenting oral testimony should notify Ms. Donna Collins, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578. The final meeting status and location can be determined by calling (919) 541–5264.

*Docket.* Docket Nos. A–90–45 and A–89–08, containing supporting information for this rulemaking, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** If no significant material adverse comments are received on these proposed amendments by the specified date, no further activity is contemplated in relation to this proposal, and the companion direct final rule (see the final rules section of this **Federal Register**) will automatically become effective on the date specified therein. If significant material adverse comments are received on this proposal, the companion direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposal. Any parties interested in commenting should do so during this comment period.

The regulatory text for this proposal is being published with the companion direct final rule and is incorporated by reference herein. In the regulatory text, the effective dates and the compliance dates are keyed to the promulgation date for both the guidelines and the standards. In the regulatory text of the guidelines, the State plan submittal dates and required final compliance dates are also dependent upon the promulgation date of these amendments. Therefore, if EPA were to withdraw the direct final rule as a result of comments on this proposal, the aforementioned dates would be revised to reflect the subsequent final promulgation date.

For further supplementary information, the detailed rationale, and the specific amendments being proposed, see the information provided in the companion direct final rule in the

direct final rules section of this issue of the **Federal Register**.

**Electronic Submittal of Comments**

Comments and data may be submitted in hard copy or electronically. Electronic submittals should be sent to A-and-R-Docket@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Comments and data will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All comments and data for this proposal, whether in paper form or in electronic forms such as through e-mail or on disk, must be identified by the docket number A–90–45/Section VIII–D.

**Executive Order 12866 Review**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1995 guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405). The amendments proposed today would not result in any additional control requirements and this regulatory action is considered "not significant" under Executive Order 12866.

**Unfunded Mandates Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (see 60 FR 65405 to 65412).

The EPA has determined that the proposed amendments do not include any new Federal mandates. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

**Regulatory Flexibility Act (RFA)**

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The rules as amended today would not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the guidelines and standards will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 97–22371 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–175; RM–9138]**

### Radio Broadcasting Services; Presho, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by West Wind Broadcasting proposing the allotment of Channel 262A at Presho, South Dakota, as the community's first local aural transmission service. Channel 262A can be allotted to Presho in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 262A at Presho are North Latitude 43–54–24 and West Longitude 100–03–36.

**DATES:** Comments must be filed on or before October 6, 1997, and reply comments on or before October 21, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, West Wind Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001(Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–175, adopted August 6, 1997, and released August 15, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97–22406 Filed 8–22–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 48 CFR Parts 810, 811, 812, 836, 852 and 870

**RIN 2900–AI05**

### VA Acquisition Regulations: Commercial Items

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs Acquisition Regulations (VAAR) concerning the acquisition of commercial items. It is proposed to amend VAAR provisions to conform to

the Federal Acquisition Regulation (FAR), to delete obsolete references and titles, to update references and titles, to reorganize material and to remove obsolete material. This document also proposes to set forth VAAR provisions and clauses for use by contracting officers for commercial item solicitations and contracts. These provisions and clauses appear to be warranted for use in commercial item solicitations and contracts. This document also requests Paperwork Reduction Act comments concerning collection of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts.

**DATES:** Comments must be received on or before October 24, 1997.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI05." All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273–8819.

**SUPPLEMENTARY INFORMATION:**

**Background**

This document proposes to transfer to Part 811 the material currently contained in Parts 810 and 812 to conform to the corresponding numbering of the FAR, to renumber and rename other provisions to conform to the FAR, to delete obsolete references and titles, and to update references and titles.

Regulations in the FAR that required the use of Federal specifications have been removed. Accordingly, implementing and supplementing regulations contained in VAAR Part 810 regarding mandatory use of Federal specifications are proposed to be removed to correspond with the FAR.

The VAAR contains a number of provisions and clauses set forth in Part 852. This document proposes to amend VAAR Part 812.301 to incorporate certain of those provisions and clauses specifically for use in VA commercial item solicitations and contracts. Contracting officers would use these provisions and clauses where appropriate for commercial item solicitations and contracts that exceed the micro-purchase threshold. The provisions and clauses could be used by contracting officers for commercial item procurements below the micro-purchase threshold when determined by the contracting officer to be in the Government's best interest. The FAR, at 48 CFR 12.301(f), states that agencies may supplement the provisions and clauses prescribed in Part 12 of the FAR as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive. These provisions and clauses have been approved by the VA Senior Procurement Executive specifically for use in commercial item solicitations and contracts. Accordingly, it is proposed that the following VAAR provisions and clauses, which are set forth at 48 CFR Chapter 8, Part 852, would apply to commercial item solicitations and contracts for the reasons stated.

*Veteran-Owned Small Business*

1. 852.219–70, Veteran-Owned Small Business (DEC 1990). The offeror represents that the firm submitting this offer (——) is (——) is not, a veteran-owned small business, (——) is (——) is not, a Vietnam era veteran-owned small business, and (——) is (——) is not, a disabled veteran-owned small business. A veteran-owned small business is defined as a small business, at least 51 percent of which is owned by a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in the day-to-day management. For the purpose of this definition, eligible veterans include:

(a) A person who served in the U.S. Armed Forces and who was discharged or released under conditions other than dishonorable.

(b) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged under conditions other than dishonorable.

(c) Disabled veterans with a minimum compensable disability of 30 percent, or a veteran who was discharged for disability. Failure to execute this representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award (see FAR 14.405).

(End of Provision)

The above Veteran-Owned Small Business provision would help support VA's policy to assist small businesses owned by veterans or by disabled veterans. The information gathered would allow VA to ensure that such firms are given an opportunity to participate in VA acquisitions. Without such information, VA's outreach efforts would be hindered.

*Commercial Advertising*

2. 852.270–4, Commercial Advertising (NOV 1984).

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor.

(End of clause)

The above Commercial Advertising clause is required to ensure that firms do not imply or claim in their advertising that VA endorses the firms' products or services.

*Guarantee*

3. 852.210–71, Guarantee (NOV 1984).

The contractor guarantees the equipment against defective material, workmanship and performance for a period of [ ],* said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material which are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.**

(End of clause)

*Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

**The above clause will be modified to conform to standards of the industry involved.

Regarding the above Guarantee clause, the FAR does not have a guarantee clause. Rather, contracting officers are expected to draft individual clauses for each acquisition. This clause is drafted to conform to commercial practices,

would reduce VA administrative costs when drafting solicitations, and would assist VA contracting officers by having a uniform guarantee clause for use in all acquisitions.

*Rejected Goods*

Contracting officers may include the following clause in contracts for property, except for contracts for packing house and dairy products, bread and bakery products, and for fresh and frozen fruits and vegetables.

4. 852.210–72, Rejected Goods (NOV 1984).

Rejected goods will be held subject to contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies which have been rejected will be charged to the contractor's account.

(End of clause)

Contracts for packing house and dairy products, bread and bakery products, and for fresh and frozen fruits and vegetables would contain the following clause:

5. 852.210–72, Rejected Goods (NOV 1984).

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of clause)

Regarding the two above Rejected Goods clauses, the FAR does not include a clause on how to handle rejected goods. The Uniform Commercial Code (UCC) provides that a buyer (VA) is under a duty to hold rejected goods for a time sufficient to permit the seller to remove them. The clause numbered as "4" sets forth a 15-day limit on holding nonperishable goods and the clause numbered as "5" sets forth a 48-hour limit on holding perishable goods. We believe that these clauses do not conflict with commercial practices and that they set forth reasonable time limits for holding rejected goods.

*Frozen Processed Foods*

6. 852.210–73, Frozen Processed Foods (NOV 1984).

The products delivered under this contract shall be in excellent condition; shall not show evidence of defrosting, refreezing, or freezer burn; and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of clause)

The above Frozen Processed Foods clause specifies the minimum acceptable condition of frozen foods upon delivery. The FAR does not contain similar requirements. VA purchases large quantities of frozen foods and this clause is proposed for use in VA's commercial item acquisitions to ensure receipt of acceptable products.

*Special Notice*

7. 852.210–74, Special Notice (APR 1984).

*Descriptive literature.* The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature which qualifies the offer will require rejection of the offer.

However, within 5 days after award of contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements.

The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment proposed to be furnished. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefor.

If the equipment is disapproved by the Government, the contractor will be subject to action under the Default provision of this contract. However, prior to default action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment.

The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of provision)

The above Special Notice provision concerns the submission of descriptive literature and is used only in telephone system acquisitions. There is no corresponding FAR coverage. This clause is proposed for use in VA's telephone system commercial item acquisitions. Because of the high installation costs for telephone equipment, the added emphasis on ensuring the capability of the equipment to meet specification requirements prior to installation appears to be warranted.

*Technical Industry Standards*

8. 852.210–75, Technical Industry Standards (APR 1984).

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the [ ]* and [ ]* as to [ ]**. The successful bidder or offeror will be required to submit proof that the item(s) he/she furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. The seal or label of any nationally recognized laboratory such as those listed by the National Fire Protection Association, Boston, Massachusetts, in the current edition of their publication "Research on Fire," is acceptable. Proof may also be furnished in the form of a certificate from one of these laboratories certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of provision)

* Insert name(s) of organization(s), the standards of which are pertinent to the Government needs.

** Insert pertinent standards, i.e., fire and casualty, safety and fire protection, etc.

The above Technical Industry Standards provision requires offerors to furnish evidence that the supplies or equipment they intend to provide meet the technical industry standards required by the solicitation. It is in VA's best interest, and the clause would be required, to ensure that the supplies or equipment VA procures meet certain standards, such as Underwriters Laboratory, to protect the safety of individuals coming in contact with or using those supplies or equipment.

*Caution to Bidders—Bid Envelopes*

9. 852.214–70, Caution to Bidders—Bid Envelopes (APR 1984)

It is the responsibility of each bidder to take all necessary precautions, including the use of proper mailing

cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left corner of the envelope used in submitting the bid.

(End of provision)

FAR Part 12 and FAR commercial item provisions do not contain any guidance to bidders regarding protection of their bid prices or on how to clearly identify their bids. This VAAR provision provides such guidance and may assist bidders in ensuring that their bid prices are protected from exposure prior to bid opening and that their bids are identified and received on time.

*Estimated Quantity(ies)*

The following clause would be used in estimated quantity contracts, except contracts for coal, orthopedic, prosthetic and optical supplies, or in National Cemetery Service contracts for monuments:

10. 852.216–70, Estimated Quantities (APR 1984).

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

The following clause would be used in local coal-hauling contracts:

11. 852.216–70, Estimated Quantity (APR 1984).

The estimated requirement shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

The following clause would be used for orthopedic, prosthetic, and optical supplies.

12. 852.216–70, Quantities (APR 1984).

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of clause)

The following clause would be used for National Cemetery Service contracts for monuments:

13. 852.216–70, Estimated Quantities (JUL 1989).

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his or her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

The above clauses regarding quantities would be for use in solicitations where definite quantities cannot be determined. They would require contractors to provide all quantities ordered under the contract, even if those quantities exceed the original estimate. These clauses appear to be necessary to ensure that VA is able to obtain the quantities that are ultimately needed.

*Sales or Use Taxes*

14. 852.229–70, Sales or Use Taxes (APR 1984).

The articles listed in this bid invitation will be purchased from personal funds of patients and prices bid herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this bid.

(End of provision)

15. 852.229–71, Sales or Use Taxes (APR 1984).

Any article purchased from this contract, payable from personal funds of patients, will be subject to any applicable sales or use tax levied thereon by any State, or by duly constituted taxing authority therein having jurisdiction to levy such a tax; the total amount of the tax applicable to such purchase payable from personal funds of patients will be computed on the total amount of the order and will be shown as a separate item on the purchase order and invoice. The bidder shall identify the applicable taxes and rates in his/her bid.

(End of provision)

Regarding the two above provisions on taxes, VA contracting officers occasionally issue solicitations for goods or services that would be purchased from patient funds. Under such circumstances, the purchase is not exempt from state and local taxes. The standard FAR clause 52.212–4, paragraph (k), provides that the contract price shall include all applicable taxes but, if used in a solicitation for purchase from patient funds, does not advise bidders that the Federal Government is not the purchaser. Since the Federal Government is exempt from most taxes, this could result in a bidder failing to include taxes in such bids. These provisions appear to be necessary for use in solicitations for commercial items to be purchased from patient funds to protect the seller from possible losses.

*Protest Content*

16. 852.233–70, Protest Content (JUN 1987)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or his/her representative and at least one copy;

(4) Set forth a detailed statement of the legal and factual ground of the protest including copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served; and

(6) State the form of relief requested.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of provision)

FAR 12.301(d) does not require contracting officers to include FAR provision 52.233–2, Service of Protest, in commercial item solicitations, but FAR 12.301(e) does allow optional use. If FAR provision 52.233–2 is used by contracting officers, this corresponding VAAR provision 852.233–70 should also be included in the solicitation. This provision advises interested parties of the information the FAR, at 33.103(d)(2), requires interested parties to include in a protest. This assists bidders/offerors by having the information readily available in the solicitation, without their having to refer back to the FAR.

*Contractor Responsibilities*

17. 852.237–70, Contractor Responsibilities (APR 1984) The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employee's fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of [ ]. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting therefrom.

(End of clause)

The above Contractor Responsibilities clause is used in service and construction contracts. This clause makes it the contractor's responsibility to obtain all necessary licenses and permits to perform the work covered by the contract and emphasizes that the contractor is responsible for safety.

*Indemnification and Insurance*

18. 852.237–71, Indemnification and Insurance (APR 1984)

(a) *Indemnification.* The contractor expressly agrees to indemnify and save harmless the Government, its officers, agents, servants, and employees from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workmen's compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. State-approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least $200,000 per passenger and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.)

(End of clause)

The above Indemnification and Insurance clause would be for use on vehicle and aircraft service contracts. It is critical that VA contractors carry appropriate insurance. The insurance protects both VA and VA beneficiaries using VA services.

*Representatives of Contracting Officers*

19. 852.270–1, Representatives of Contracting Officers (APR 1984) The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation shall be furnished the contractor.

(End of provision)

The above Representatives of Contracting Officers provision would be used whenever it may be necessary to designate another individual to act as the contracting officer's technical representative.

*Quantities*

20. 852.270–2, Quantities (APR 1984). The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Department of Veterans Affairs.

(End of clause)

The above Quantities clause is similar to the clauses under 852.216–70 and would be used in bread and bakery products solicitations. It requires contractors to provide up to 25 percent more, or allows VA to order up to 25 percent less, than the estimated quantities shown in the solicitation. It is proposed for use in commercial item contracts for bread and bakery products to allow VA leeway in ordering such products, where exact usage is difficult to predict.

*Shellfish*

21. 852.270–3, Shellfish (APR 1984). The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the

approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

The above Shellfish clause specifies minimum standards that contractors must meet when furnishing shellfish to VA. There are no similar provisions in the FAR and the clause is proposed for use in commercial item solicitations for shellfish to ensure that such items meet minimum Federal standards.

*Service Data Manual*

The following Service Data Manual clause may be used, in accordance with the prescriptions contained in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items of technical medical equipment and devices, provided the contracting officer determines that use of the clause is consistent with customary commercial practice. Such use is permitted by FAR 12.301(a)(2).

22. 852.210–70, Service Data Manual (NOV 1984).

(a) The successful bidder will supply operation/service (maintenance) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in (b) through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his/her responsibility in supplying the technical data called for therein.

(b) Title Page and Front Matter—The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustrations and a frontispiece (photograph or line drawing) depicting the equipment.

(c) Section I, General Description—This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) Section II, Installation—Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.)

(e) Section III, Operation—Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein.

Where applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions which are software related.

(f) Section IV, Principles of Operation—This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) Section V, Maintenance—The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficient data will be provided to enable their purchase by the Department of Veterans Affairs. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) Section VI, Replacement Parts List—The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and

pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) Section VII, Drawings—Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or production sketches.

(End of clause)

The following Service Data Manual clause may be used, in accordance with the prescriptions contained in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items of mechanical equipment (other than technical medical equipment and devices), provided the contracting officer determines that use of the clause is consistent with customary commercial practice. Such use is permitted by FAR 12.301(a)(2).

23. 852.210–70, Service Data Manual (NOV 1984).

The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of clause)

When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause would be used:

24. 852.210–70, Service Data Manual (NOV 1984).

The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.210–70(a) to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.210–70(a) with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(End of clause)

The above clauses concerning service data manuals would be required in support of VA's equipment acquisitions and equipment repair program. End-use operators of equipment need operator's manuals to ensure that the equipment is operated properly and safely and that the equipment is properly cleaned. VA biomedical engineers repair many of the items of equipment at VA medical centers and must have the vendor's repair manuals to accomplish those repairs.

*Brand Name or Equal*

25. 852.210–77, Brand Name or Equal (NOV 1984).

(Note: as used in this clause, the term *brand name* includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c) (1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation or Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality or the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity.

*Caution To Bidders.* The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and (ii) Establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall:

(i) Include in his/her bid a clear description of such proposed modifications, and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

Although the FAR expresses a preference for use of performance specifications on Federal Government solicitations, the use of "brand name or equal" purchase descriptions is often necessary to simplify and expedite the acquisition process. The General Services Administration uses a similar clause and the Civilian Agency Acquisition Council is considering reinstating "brand name or equal" provisions in the FAR. Use of "brand name or equal" purchase descriptions is a commercial practice in many industries. If use of a "brand name or equal" purchase description is found by the contracting officer to be a commercial practice for a specific solicitation, a standard clause should be used to advise bidders/offerors that such descriptions are not intended to restrict the acquisition to brand name items. A standard clause would ensure uniformity and reduce the administrative costs of solicitation preparation.

*Nondiscrimination in Services Provided Beneficiaries*

The following clause would be used in all VA requests for quotations, solicitations and contracts for providing services to eligible beneficiaries:

26. 852.271–70, Nondiscrimination in Services Provided Beneficiaries (APR 1984)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Under Secretary for Health, or designee, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of clause)

The above nondiscrimination clause is proposed for use in commercial item contracts providing services to eligible beneficiaries to ensure that vendors do not discriminate against VA beneficiaries based on a veteran's race, color, religion, sex, or national origin.

*Miscellaneous*

This document proposes to add paragraph 812.301(f) to clarify that VAAR clauses are not required for use in micro-purchases, but may be used in micro-purchases at the option of the contracting officer when use is determined by the contracting officer to be in the Government's best interest.

This document proposes to add paragraph 812.302, in accordance with FAR 12.302(c), to provide agency procedures for approval of waivers. Waivers are required if contracting officers wish to tailor clauses or otherwise include additional terms and conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired. The criteria that must be used by the next higher level supervisor in approving the waiver is set forth at FAR 12.302(c), which provides that the waiver describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice, and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The adoption of this proposed rule would not cause a significant effect on any entities. Costs to comply with any of the provisions of the proposed rule will be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are contained in a number of the clauses and provisions set forth in the Supplementary Information portion of this proposed rule. Although this document proposes to add provisions and clauses for commercial item solicitations and contracts, this Paperwork Reduction Act notice of this document seeks approval for collections of information for both commercial and non-commercial item, service, and construction solicitations and contracts. The provisions and clauses are used in both commercial and non-commercial item, service, and construction solicitations and contracts. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI05."

*Title:* Commercial and Non-Commercial Items, Services and Construction.

*Title and Provision/Clause Number:* 852.219–70, Veteran-Owned Small Business.

*Summary of collection of information:* VAAR Provision 852.219–70, Veteran-Owned Small Business, requests that a firm submitting a quotation, bid, or offer furnish information regarding whether or not the firm is a small business owned by a veteran, a Vietnam era veteran, or a disabled veteran. The information required by this VAAR provision will be used by VA to identify veteran-owned businesses to ensure eligible veteran-owned firms are given an opportunity to participate in VA solicitations for goods and services. Without this information, there would be no way to properly monitor this program or conduct VA outreach efforts.

*Description of need for information and proposed use of information:* Public Law 93–237 amended the Small Business Act by directing the U.S. Small Business Administration (SBA) to give "special consideration" to veterans of the U.S. Armed Forces in all SBA programs. In September 1983, VA adopted the "special consideration" philosophy and directed all VA contracting activities to take affirmative action to solicit and assist Vietnam era and disabled veteran-owned small businesses to participate in the VA acquisition process. On April 5, 1990, the Secretary approved an initiative to expand the Vietnam era and disabled veteran-owned small business program to include all veteran-owned small businesses. Title 38 United States Code vests the Secretary with broad authority to assist veterans. The information collected is a self-certification that a firm is veteran-owned. It allows VA to ensure that eligible veteran-owned firms are given an opportunity to participate in VA acquisitions and to monitor our success in implementing these regulatory provisions. The information requested will be solicited from respondents on a voluntary basis.

*Description of likely respondents:* All firms submitting written or electronic quotations, bids, or offers to VA.

*Estimated number of respondents:* 3,403,500 written quotations, bids, or offers.

*Estimated frequency of responses:* One response for each written quotation, bid, or offer submitted.

*Estimated average burden per collection:* 15 seconds.

*Estimated total annual reporting and recordkeeping burden:* 14,181 hours.

*Title and Provision/Clause Number:* Provision 852.210–74, Special Notice.

*Summary of collection of information:* This provision is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment the contractor intends to furnish to show how that equipment meets the specification requirements of the solicitation.

*Description of need for information and proposed use of information:* The information is needed to ensure that the equipment proposed by the contractor meets the specification requirements. Failure to require the information could result in the installation of equipment that does not meet contract requirements, with significant loss to the contractor if the contractor subsequently had to remove the equipment and furnish equipment that did meet the specification requirements.

*Description of likely respondents:* Firms awarded VA contracts for telephone systems.

*Estimated number of respondents:* 30 per year.

*Estimated frequency of responses:* Once for each contract awarded.

*Estimated average burden per collection:* 5 hours.

*Estimated total annual reporting and recordkeeping burden:* 150 hours.

*Title and Provision/Clause Number:* Provision 852.210–75, Technical Industry Standards.

*Summary of collection of information:* This provision requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the National Fire Protection Association, and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as the UL tag on an electrical cord or a tag on a fire-rated door. This requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the items furnished have been tested in accordance with, and conform to, the specified standards. Only those firms required to submit a separate certificate are noted below.

*Description of need for information and proposed use of information:* To ensure that the items being furnished meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public.

*Description of likely respondents:* Firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation.

*Estimated number of respondents:* 100.

*Estimated frequency of responses:* Once for each contract awarded.

*Estimated average burden per collection:* 30 minutes.

*Estimated total annual reporting and recordkeeping burden:* 50 hours.

*Title and Provision/Clause Number:* Provision 852.214–70, Caution to Bidders—Bid Envelopes.

*Summary of collection of information:* This provision advises bidders/offerors that it is their responsibility to insure that their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders/offerors to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. A bid envelope or a label is often furnished by the Government for use by bidders/offers to identify their bids.

*Description of need for information and proposed use of information:* The information is needed by the Government to identify which parcels of mail are bids/offers and which are other routine mail without having to open the envelopes to identify their intent and possibly exposing bid/offer prices before bid opening. The information will be used to identify which parcels of mail are bids and which are other routine mail. The information is also needed to help ensure that bids/offers are delivered to the proper bid opening room on time and prior to bid opening.

*Description of likely respondents:* All firms submitted sealed bids.

*Estimated number of respondents:* 346,000.

*Estimated frequency of responses:* Once for each sealed bid/offer submitted.

*Estimated average burden per collection:* 10 seconds.

*Estimated total annual reporting and recordkeeping burden:* 960 hours.

*Title and Provision/Clause Number:* Clause 852.237–71, Indemnification and Insurance.

*Summary of collection of information:* This clause is used in solicitations for vehicle or aircraft services. It requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. This evidence is in the form of a certificate from the firm's insurance company.

*Description of need for information and proposed use of information:* The information is required to protect VA by ensuring that the firm to which award will be made possesses the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

*Description of likely respondents:* Apparent successful bidders/offerors on solicitations for vehicle or aircraft services.

*Estimated number of respondents:* 500.

*Estimated frequency of responses:* Once for each contract awarded.

*Estimated average burden per collection:* 30 minutes.

*Estimated total annual reporting and recordkeeping burden:* 250 hours.

*Title and Provision/Clause Number:* Provision 852.270–3, Shellfish.

*Summary of collection of information:* This provision requires that a firm furnishing shellfish to VA must ensure that the shellfish is packaged in a container that is marked with the packer's State certificate number and State abbreviation. In addition, the firm must ensure that the container is tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper. This information normally accompanies the shellfish from the packer and is not information that must be separately obtained by the seller.

*Description of need for information and proposed use of information:* The information is needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source. The information is used to help ensure that VA purchases healthful shellfish.

*Description of likely respondents:* Any firm selling shellfish to VA.

*Estimated number of respondents:* 1,000.

*Estimated frequency of responses:* Once for each shipment of shellfish.

*Estimated average burden per collection:* 1 minute.

*Estimated total annual reporting and recordkeeping burden:* 17 hours.

*Title and Provision/Clause Number:* Clause 852.210–70, Service Data Manual.

*Summary of collection of information:* When VA purchases technical medical equipment and devices, or mechanical equipment, VA also requires the contractor to furnish both operators manuals and maintenance/repair manuals. This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as a separately priced line item on the purchase order.

*Description of need for information and proposed use of information:* The operator's manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA equipment repair staff to repair the equipment.

*Description of likely respondents:* Firms selling technical medical equipment or devices or mechanical equipment to VA.

*Estimated number of respondents:* 15,000.

*Estimated frequency of responses:* Once for each contract awarded.

*Estimated average burden per collection:* 10 minutes.

*Estimated total annual reporting and recordkeeping burden:* 2,500 hours.

*Title and Provision/Clause Number:* 852.210–77, Brand Name or Equal.

*Summary of collection of information:* This clause advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal.

*Description of need for information and proposed use of information:* The information will be used by the contracting officer to evaluate whether or not the item offered meets the specification requirements.

*Description of likely respondents:* Any firm offering an "equal" item on a solicitation requesting bids or offers on a "brand name or equal" basis.

*Estimated number of respondents:* 10,000.

*Estimated frequency of responses:* Once for each solicitation on which the firm is proposed an "equal" item.

*Estimated average burden per collection:* 5 minutes.

*Estimated total annual reporting and recordkeeping burden:* 833 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

**List of Subjects**

*48 CFR Parts 810, 811, and 812*

Government procurement.

*48 CFR Parts 836 and 852*

Government procurement, Reporting and recordkeeping requirements.

*48 CFR Part 870*

Asbestos, Frozen foods, Government procurement, Telecommunications.

Approved: August 8, 1997.

**Hershel W. Gober,**

*Secretary-Designate of Veterans Affairs.*

For the reasons set forth in the preamble, and consistent with the authority in 38 U.S.C. 501 and 40 U.S.C. 486(c), 48 CFR Chapter 8 is proposed to be amended as follows:

## PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for parts 812, 836, and 852 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

## PART 810—[REMOVED]

2. Part 810 is removed.

3. Part 811 is added to read as follows:

## PART 811—DESCRIBING AGENCY NEEDS

Sec.



**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

### 811.001 Definitions.

(a) *Brand name product* means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer or distributor.

(b) *Salient characteristics* are those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are those essential physical or functional features which are identified in the specifications as a mandatory requirement which a proposed "equal" product or material must possess in order for the bid to be considered responsive. Bidders must furnish all descriptive literature and bid samples required by the solicitation to establish such "equality".

## Subpart 811.1—Selecting and Developing Requirements Documents

### 811.104 Items particular to one manufacturer.

(a) Specifications shall be written in accordance with FAR 11.002 unless otherwise justified by the specification writer and approved by the contracting officer as described in paragraph (b) of this section. The contract file shall be documented accordingly.

(b) When it is determined that a particular physical or functional characteristic of only one product will meet the minimum requirements of the Department of Veterans Affairs (see FAR 11.104) or that a "brand name or equal" purchase description will be used, the specification writer, whether agency personnel, architect-engineer, or consultant with which the Department of Veterans Affairs has contracted, shall separately identify the item(s) to the contracting officer and provide a full written justification of the reason the particular characteristic is essential to the Government's requirements or why the "brand name or equal" purchase description is necessary. The contracting officer shall make the final determination whether restrictive specifications or "brand name or equal" purchase descriptions will be included in the solicitation.

(c) Purchase descriptions that contain references to one or more brand name products may be used only in accordance with 811.104–70, 811.104–71, and 811.104–72. In addition,

purchase descriptions that contain references to one or more brand name products shall be followed by the words "or equal," except when the acquisition is fully justified under FAR 6.3 and (VAAR) 48 CFR 806.3. Acceptable brand name products should be listed in the solicitation. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products are determined by the Government to fully meet the salient characteristics listed in the invitation. The contract file will be documented in accordance with paragraph (b) of this section, justifying the need for use of a brand name or equal description.

(d) "Brand name or equal" purchase descriptions shall set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(3) Name of manufacturer, producer or distributor of each brand name product referenced (and address if not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description or pertinent extract may be used if such description is identified in the solicitation as being that of the particular named manufacturer, producer or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (d) of this section, purchase descriptions shall not include either minimum or maximum restrictive dimensions, weights, materials or other salient characteristics which are unique to a brand name product or which would tend to eliminate competition or other products which are only marginally outside the restrictions. However, purchase description may include restrictive dimensions, weights, materials or other salient characteristic if such restrictions are determined in writing by the user to be essential to the Government's requirements, the brand name of the product is included in the purchase description, and all other determinations required by 811.104 are made.

**811.104–70 Purchase descriptions.**

(a) When any purchase description, including a "brand name or equal" purchase description, is used in a solicitation for a supply contract to describe required items of mechanical equipment, the solicitation will include the clauses in 852.211–70 (Service Data Manual) and in 852.211–71 (Guarantee).

(b) Solicitations using "brand name or equal" purchase descriptions will contain the "brand name or equal" clause in 852.211–77, and the provision set forth at FAR 52.214–21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202–5(d) when utilizing the descriptive literature provision.

(c) Except as provided in 811.104–70(d), when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the solicitation, for completion by the bidder:

Bidding on:
Manufacturer name _____
Brand _____
No. _____

(d) (1) When component parts of an end item are described in the solicitation by a "brand name or equal" purchase description and the contracting officer determines that the clause in 811.104–70(b) is inapplicable to such component parts, the requirements of 811.104–70(c) shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts (list the component parts to which the clause does not apply): and

(2) In the alternative, if the contracting officer determines that the clause in 811.104–70(b) shall apply to only certain such component parts, the requirements of 811.104–70(c) shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts (list the component parts to which the clause applies):

(e) When a solicitation contains "brand name or equal" purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may require the submission of bid samples in the case of bidders offering "or equal" products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214–20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name or Equal" clause, 852.211–77(c)(1) and (2), even though bid samples may not be required.

**811.104–71 Bid evaluation and award.**

(a) Bids offering products that differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 852.211–77 that the offered products are clearly identified in the bids and are equal in all material respects to the products specified.

(b) Award documents shall identify, or incorporate by reference, an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the descriptions of the end items contain "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.211–77 was applicable to such component parts or accessories (see 811.104–70(d)(2)).

**811.104–72 Procedure for negotiated procurements.**

(a) The policies and procedures prescribed in 811.104–70 and 811.104–71 should be used as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The clause at 852.211–77 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer

determines that such offered products are equal in all material respects to the products referenced.

## Subpart 811.2—Using and Maintaining Requirements Documents

### 811.202 Maintenance of standardization documents.

(a) *Military and departmental specifications.* Contracting officers may, when they deem it to be advantageous to the Department of Veterans Affairs, utilize these specifications when procuring supplies and equipment costing less than the simplified acquisition threshold. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (b)(3) and (b)(4) of this section.

(b) *Nutrition and food service specifications.* (1) The Department of Veterans Affairs has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Department of Veterans Affairs use, are contained in the Federal Hospital Subsistence Guide. A copy of this guide and the IMPS may be obtained from any Department of Veterans Affairs contracting officer.

(2) Contract terms and conditions governing the procurement of subsistence items are listed in the Federal Hospital Subsistence Guide and IMPS. These provisions shall be made a part of each solicitation for such items when applicable.

(3) The military specifications for meat and meat products contained in the Federal Hospital Subsistence Guide shall be used by the Department of Veterans Affairs only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in the Federal Hospital Subsistence Guide may be used when purchasing either from DLA or from local dealers.

(4) Except as authorized in part 846 of this chapter, contracting officers shall not deviate from the specifications contained in the Federal Hospital Subsistence Guide and the IMPS without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(5) Items of meat, cured pork and poultry not listed in either the Federal Hospital Subsistence Guide or the IMPS, will not be purchased without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) *Department of Veterans Affairs specifications.* (1) The Director, Publications Service, is responsible for developing, publishing, and distributing Department of Veterans Affairs specifications covering printing and binding.

(2) Department of Veterans Affairs specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Facility requirements for these specifications will be requisitioned from that source.

(d) *Government paper specification standards.* (1) Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating, will require that such paper stocks be in accordance with the Government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

(2) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources.

(3) There are three types of binding/rebinding:

(i) Class A (hard cover);

(ii) Perfect (glued); and

(iii) Lumbinding (sewn). The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

### 811.204 Solicitation provisions and contract clauses.

*Specifications.* When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include desired options and shall conform to the following:

Shall be type_____, grade _____, in accordance with (type of specification) No. _____, dated _____ and amendment _____ dated _____ except paragraphs _____ and _____ which are amended as follows:

## Subpart 811.4—Delivery or Performance Schedules

### 811.404 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.211–8 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

## Subpart 811.5—Liquidated Damages

### 811.502 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FAR 11.502. In making this decision, consideration will be given to whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. Liquidated damages provisions will not be included as insurance against selection of a non-responsible bidder, as a substitute for efficient contract administration, or as a penalty for failure to perform on time.

### 811.504 Contract clauses.

When the liquidated damages clause prescribed in FAR 52.211–11 or 52.211–12 is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.211–78 will be included in the contract.

## Subpart 811.6—Priorities and Allocations

### 811.602 General.

(a) Priorities and allocations of critical materials are controlled by the Department of Commerce. Essentially, such priorities and allocations are restricted to projects having a direct connection with supporting current defense needs. The Department of Veterans Affairs is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in

short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Department of Veterans Affairs in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Deputy Assistant Secretary for Acquisition and Materiel Management (90):

(1) A description of the maintenance and repair project or the new item, whichever is applicable;

(2) The critical material and the amount required;

(3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer;

(4) The Department of Veterans Affairs contract or purchase order number;

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer;

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided;

(7) The nature and extent of the emergency that will be generated at the station, e.g.,

(i) Damage to the physical plant,

(ii) Impairment of the patient care program,

(iii) Creation of safety hazards, and

(iv) Any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials; and

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Chief Facilities Management Officer, Office of Facilities Management, to be awarded and administered by the facility contracting officer.

4. Part 812 is revised to read as follows:

## PART 812—ACQUISITION OF COMMERCIAL ITEMS

### Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

**812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(a) Notwithstanding prescriptions contained elsewhere in this chapter, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part.

(b) The provision and clause in the following VAAR sections shall be used, in accordance with the prescriptions contained therein or elsewhere in this chapter, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.219–70, Veteran-owned small business.

(2) 852.270–4, Commercial advertising.

(c) The provisions and clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in this chapter, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.211–71, Guarantee clause.

(2) 852.211–72, Inspection.

(3) 852.211–73, Frozen processed foods.

(4) 852.211–74, Telecommunications equipment.

(5) 852.211–75, Technical industry standards.

(6) 852.214–70, Caution to bidders-bid envelopes.

(7) 852.216–70, Estimated quantities for requirements contracts.

(8) 852.229–70, Purchases from patient's funds.

(9) 852.229–71, Purchases for patients using Government funds and/or personal funds of patients.

(10) 852.233–70, Protest content.

(11) 852.237–70, Contractor responsibilities.

(12) 852.237–71, Indemnification and insurance (vehicle and aircraft service contracts).

(13) 852.270–1, Representatives of contracting officers.

(14) 852.270–2, Bread and bakery products.

(15) 852.270–3, Purchase of shell fish.

(d) The clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in this chapter, in requests for quotations, solicitations, or contracts for the acquisition of commercial items, provided the contracting officer determines that use of the clauses is consistent with customary commercial practices.

(1) 852.211–70, Requirements for operating and maintenance manuals.

(2) 852.211–77, Brand name or equal.

(e) The contracting officer shall insert the clause in 852.271–70, Services provided eligible beneficiaries, by reference, in all requests for quotations, solicitations, and contracts meeting the prescription contained therein.

(f) Clauses are not required for micro-purchases using the procedures of this part or part 813. However, this does not prohibit the use of any clause prescribed in this part or elsewhere in this chapter in micro-purchases when determined by the contracting officer to be in the Government's best interest.

**812.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

*Agency procedures for approval of waivers:* Waivers to tailor solicitations in a manner that is inconsistent with customary commercial practice shall be prepared by contracting officers in accordance with FAR 12.302(c). Waiver requests shall be submitted to the contracting officer's next higher level supervisor for approval. Approved requests shall be retained in the contract file.

## PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

**836.202 [Amended]**

5. In part 836, § 836.202(a) is amended by removing "part 810" and adding, in its place, "part 811".

**836.206 [Amended]**

6. In part 836, § 836.206 is amended by removing "812.202" and adding, in its place, "811.502"; by removing "852.212–70" and adding, in its place, "852.211–78"; and by removing "52.212–5" and adding, in its place, "52.211–12".

## PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Part 852 is amended by redesignating the following sections as set forth below:

| Old section | New section |
|---|---|
| 852.210–70 | 852.211–70 |
| 852.210–71 | 852.211–71 |
| 852.210–72 | 852.211–72 |
| 852.210–73 | 852.211–73 |
| 852.210–74 | 852.211–74 |
| 852.210–75 | 852.211–75 |
| 852.210–76 | 852.211–76 |

**852.210–77 [Redesignated as 852.211–77]**

8. In part 852, § 852.210–77 is redesignated as § 852.211–77 and the introductory text is amended by removing "810.004" and adding, in its place, "811.104".

**852.212–70 [Redesignated as 852.211–78]**

9. In part 852, § 852.212–70 is redesignated as § 852.211–78, and the introductory text is amended by

removing "812.204" and adding, in its place, "811.504".

**852.219–70 [Amended]**

10. In part 852, § 852.219–70 introductory text is amended by removing "819.7003(a)" and adding, in its place, "819.7003(b)".

**852.229–70 [Amended]**

11. In part 852, § 852.229–70 introductory text is amended by adding "or, if the contract is for commercial items, in lieu of paragraph (k), Taxes, in FAR clause 52.212–4" immediately after "in FAR 52.229–1".

**852.229–71 [Amended]**

12. In part 852, § 852.229–71 introductory text is amended by adding "or, if the contract is for commercial items, as an addendum to FAR clause 52.212–4" immediately after "in FAR 52.229–1".

**852.271–70 [Amended]**

13. In part 852, § 852.271–70 is amended by removing "Chief Medical Director" and adding, in its place, "Under Secretary for Health".

## PART 870—SPECIAL PROCUREMENT CONTROLS

14. The authority citation for part 870 is revised to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**870.112 [Amended]**

15. In part 870, § 870.112, paragraph (a) is amended by removing "852.210–74" and adding, in its place, "852.211–74", Footnote 1 is amended by removing "Veterans Administration" and adding, in its place, "Department of Veterans Affairs", paragraph (b) is amended by removing "852.210–74" and adding, in its place, "852.211–74", by removing "the Office of Information Resources Operations" and adding, in its place, "Telecommunications Support Service"; by removing "(93)" each time it appears in paragraphs (b) and (c)(1) and adding, in its place, ", Acquisition Administration Team".

[FR Doc. 97–21869 Filed 8–22–97; 8:45 am]
BILLING CODE 8320–01–P

# Notices

Federal Register
Vol. 62, No. 164
Monday, August 25, 1997

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 Secretary

### National Commission on Small Farms; Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service to provide support to the Commission. The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. The chair of the Commission has decided that the Commission may hold subcommittee meetings in order to gather public input from different regions of the country. The Commission is scheduling three subcommittee meetings during the first week of September.

**PLACES, DATES AND TIMES OF MEETINGS:** The Commission's first subcommittee meeting is September 2 at the Marriot, 189 Wolf Road, Albany, New York from 10 a.m. to 4 p.m. (Printed in an earlier **Federal Register** notice.) The Commission's second subcommittee meeting is September 4 at the Hyatt Regency Hotel, 330 Tijeras, Albuquerque, New Mexico from 10 a.m. to 4 p.m. The Commission's third subcommittee meeting is September 5 at the Monarch Hotel, 12566 Southeast . 93rd Avenue, Clackamas, Oregon which is in the Portland, Oregon area, from 10 a.m. to 4 p.m. The meetings are open to the public. We are seeking testimony from various sources to arrive at conclusions and recommendations that will ensure the continued viability of small farms. The Commission requests that testimony and comments include ideas and recommendations based on the following questions. Concerns or problems of individual farms that relate to specific USDA programs should be addressed only in the context of a recommendation for the Commission to consider.

The questions are:

1. How are current USDA programs helping or hurting the viability of small farms?
2. What are the needs of small farms in terms of financing, research, extension, marketing and risk management and other areas? What recommendations would you make about these needs that could be part of a long-range strategy to ensure the continued viability of small farms?
3. Are there innovative non-governmental or state efforts to assist beginning and smaller independent farms that might be replicated or supplemented at the Federal level?
4. What changes in USDA policy or practices are needed to make USDA programs in the areas of credit, research, extension, marketing, risk management and other areas more effective in enabling small farms to survive and thrive?
5. What new programs could provide effective and affordable support for small farmers as commodity programs are phased out?
6. What can be done to assist beginning farmers and farm workers to become farm owners?
7. What role should the Federal government play to ensure a diversified, decentralized and competitive farm structure?
8. What do small farms contribute to your community and your state?
9. What other generic issues pertaining to small farms should the Commission consider?

Interested parties wishing to testify at these subcommittee meetings must contact the office of the National Commission on Small Farms by August 28, 1997, in order to be placed on a list of witnesses. Oral presentations will be limited to 5 minutes. Those wishing to testify, but unable to notify the Commission office by August 28, will be able to sign up as a presenter September 2 in Albany, New York, September 4 in Albuquerque, New Mexico and September 5 in Clackamas, Oregon. At each meeting location, sign up will begin at 9:30 a.m. and end at 11 a.m. These presenters will testify on a first come, first served basis and comments will be limited based on the time available and the number of presenters. Written statements will be accepted at the meeting or may be mailed or faxed to the Commission office by September 12, 1997.

**ADDRESSES:** Comments and statements should be sent to National Commission on Small Farms, U.S. Department of Agriculture, PO Box 2890, Room 5237, South Building, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 690–0648 or (202) 690–0673. The fax number is (202) 720–0596.

**SUPPLEMENTARY INFORMATION:** The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. On the basis of the review, the Commission shall analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. The national strategy shall include, but not be limited to: changes in existing policies, programs, regulations, training, and program delivery and outreach systems; approaches that assist beginning farmers and involve the private sectors and government, including assurances that the needs of minorities, women, and persons with disabilities are addressed; areas where new partnerships and collaborations are needed; and other approaches that it would deem advisable or which the Secretary of Agriculture or the Chief of the Natural Resources Conservation Service may request the Commission to consider.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implements a recommendation of the USDA Civil Rights Action Report to appoint a diverse commission to develop a national policy on small farms.

Dated: August 20, 1997.

**Pearlie S. Reed,**

*Acting Assistant Secretary for Administration.*

[FR Doc. 97–22539 Filed 8–22–97; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. PY–97–C09]**

### Notice of Request for Extension of a Currently Approved Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension to a currently approved information collection in support of the Poultry Market News Program.

**DATES:** Comments on this notice must be received by October 24, 1997.

**ADDITIONAL INFORMATION:** Contact Grover T. Hunter, Market News Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0262, 1400 Independence Avenue SW, Washington, D.C. 20090–6456, (202) 720–6911 and FAX (202) 720–2403.

**SUPPLEMENTARY INFORMATION:**

*Title:* Market News Reports (Agricultural Marketing Act of 1946).

*OMB Number:* 0581–0033

*Expiration Date of Approval:* January 31, 1998

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Under the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) the Poultry Market News Branch provides nationwide coverage of broiler/fryers, turkeys, and eggs through field offices. Reporters in the Federal-State field offices make contact with trade members.

The mission of Market News is to provide current unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer, depicting current conditions on supply, demand, price, trend, movement, and other pertinent information affecting the trade in poultry and eggs, and their respective products. In order to accomplish this mission, Market News observes, records, interprets, and reports trading levels of poultry and egg markets. Market reports assist producer-processors in their production planning, and help promote orderly marketing by placing producer-processors and others in the industry on a more equal bargaining basis.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.83 hours per response.

*Respondents:* Producers, processors, brokers, retailers.

*Estimated Number of Respondents:* 1,720.

*Estimated Number of Responses per Respondent:* 123.69.

*Estimated Total Annual Burden on Respondents:* 17,657 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the methodology and assumptions used; (3) ways to enhance quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Grover T. Hunter, Chief, Market News Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0262, 1400 Independence Avenue SW, Washington, D.C. 20090–6456.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 19, 1997.

**D. Michael Holbrook,**

*Director, Poultry Division.*

[FR Doc. 97–22521 Filed 8–22–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 97–075–1]**

### Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

*Place, Dates, and Time of Meeting:* The meeting will be held in the Conference Center of the USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737. Sessions will be held from 8 a.m. to 5 p.m. on September 9–10, 1997, and from 8 a.m. to 12 p.m. on September 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quita Bowman, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231, (301) 734–7707; or e-mail: qbowman@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:** The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on emerging issues, the design of an emergency management system, and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. Quita Bowman at the address listed under **FOR FURTHER INFORMATION CONTACT.** Written comments may also be filed at the time of the meeting. Please refer to Docket No. 97–075–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC this 19th day of August 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–22524 Filed 8–22–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration (BXA).

*Title:* Survey of Optoelectronics Industry to Assess the Current Status of Optoelectronics R&D and Manufacturing in the U.S.

*Agency Form Number:* None assigned.

*OMB Approval Number:* None assigned.

*Type of Request:* Approval of a new collection of information.

*Burden:* 2,400 hours.

*Average Hours Per Response:* 4.

*Number of Respondents:* 600 respondents.

*Needs and Uses:* This collection of information is needed to complete an assessment of the current status of the U.S. optoelectronics industry in such areas as production methods, technological development, economic performance, and international competitiveness. This survey is being initiated because a number of U.S. industry associations involved in optoelectronics and optics recently cited the need for a critical technology assessment of the U.S. optoelectronics industry. The health of the U.S. optoelectronics industry is particularly important because this technology has a number of critical defense applications.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Victoria Baecher-Wassemer (202) 385–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: August 18, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–22541 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–DT–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held September 23, 1997, 9:00 a.m., in the Plaza Room of the Portland World Trade Center, 25 S.W. Salmon, Portland, Oregon. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

**Agenda**

1. Opening remarks by the Chairwoman.

2. Presentation of papers or comments by the public.

3. Update on Bureau of Export Administration initiatives:

- Draft encryption regulation.
- Status of Wassenaar Arrangement implementation regulation.
- Efforts to harmonize the Foreign Trade Statistics Regulations and the Export Administration Regulations in regards to the filing of Shipper's Export Declarations.

4. Discussion of European, Japanese, and U.S. export controls in regards to "catch-all" proliferation controls, Wassenaar Arrangement controls, encryption items, and the hiring of foreign nationals.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS–EA, MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 19, 1997.

**Lee Ann Carpenter,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 97–22425 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–403–801]**

### Fresh and Chilled Atlantic Salmon From Norway; Notice of Termination of New Shipper Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of termination of New Shipper Review.

**SUMMARY:** On May 28, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 28840) a notice announcing the initiation of a new shipper antidumping duty administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway, covering the period November 1, 1996, through April 30, 1997, and one manufacturer/exporter of the subject merchandise, Nornir Group A/S (Nornir). This review has now been terminated as a result of the withdrawal of the request for administrative review by the interested party.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Todd Peterson or Thomas Futtner, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4195 or 482–3814, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 30, 1997, Nornir requested a new shipper review of its U.S. sales of subject merchandise. On May 28, 1997, in accordance with 19 CFR Sec. 353.22h(6), we initiated the administrative review of this order for the period November 1, 1996, through April 30, 1997. On July 7, 1997, the respondent, Nornir, withdrew its request for review.

**Termination of Review**

The respondents withdrew their requests within the time limit provided by the Department's regulations at 19 CFR Sec. 353.22(a)(5)(1996). Therefore, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with 19 CFR Sec. 353.22(a)(5).

Dated: August 14, 1997.

**Jeffrey P. Bialos,**

*Principal Deputy Assistant Secretary for Import Administration.*

[FR Doc. 97–22409 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–605]**

### Frozen Concentrated Orange Juice From Brazil: Notice of Termination of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Fabian Rivelis or Irina Itkin, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3853 or (202) 482–0656, respectively.

**SUMMARY:** On June 19, 1997, the Department of Commerce ("the Department") published in the **Federal Register** (62 FR 33394) a notice announcing the initiation of an administrative review of the antidumping duty order on frozen concentrated orange juice ("FCOJ") from Brazil, covering the period May 1, 1996, through April 30, 1997. This review has now been terminated as a result of the withdrawal of the request for administrative review by the interested party.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 30, 1997, the Department received a request from Branco Peres Citrus, S.A. (Branco Peres) to conduct an administrative review of its entries, pursuant to 19 CFR 353.22(a) of the Department's regulations. The period of review is May 1, 1996, through April 30, 1997. On June 19, 1997, the Department published in the **Federal Register** (62 FR 33394) a notice announcing the initiation of an administrative review of the antidumping duty order on FCOJ from Brazil, covering the period May 1, 1996, through April 30, 1997.

**Termination of Review**

On August 4, 1997, we received a timely request for withdrawal of the request for administrative review from Branco Peres. Because there were no other requests for administrative review from any other interested party, in accordance with section 353.22(a)(5) of the Department's regulations, we have terminated this administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: August 14, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97–22411 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 97–007R. *Applicant:* University of Oklahoma, Purchasing Department, 660 Parrington Oval, Room 321, Norman, OK 73019. *Instrument:* $CO_2$/Far-Infrared Laser System. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of February 27, 1997.

*Docket Number:* 97–068. *Applicant:* University of Florida, Geology Department, 1112 Turlington Hall, Gainesville, FL 32611. *Instrument:* IR Mass Spectrometer, Model DELTAplus. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of naturally occurring materials such as ocean and lake bottom sediments, rock minerals, fossils and water. Experiments will be conducted to ascertain how isotope ratios of carbon, oxygen and nitrogen have varied through time or have been altered or how they vary geographically. In addition, the instrument will be used for educational purposes in the courses GLY 6268C Isotope Geology and GLY 6297 Topics in Geochemistry providing students with hands-on experience in the operation of stable isotope ratio mass spectrometers. *Application accepted by Commissioner of Customs:* July 31, 1997.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 97–22410 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcing a Meeting of the Computer System Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Tuesday, September 16, Wednesday, September 17, and Thursday, September 18, 1997, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal

computer systems. All sessions will be open to the public.

**DATES:** The meeting will be held on September 16, 17, and 18, 1997, from 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland in the Administration Building, in Lecture Room A on September 16 and 17 and in Lecture Room B on September 18.

**Agenda**

—Welcome and Overview
—Issues Update and Briefings
—Federal Security Impacts—Pending Legislation
—Update on Computer Security Act of 1987 Revision
—Federal Computer Incident Response Capability (FedCIRC) Update
—CIO Council Briefings
—Discussion
—Pending Business
—Public Participation
—Agenda Development for December Meeting and Planning for 1998
—Wrap-Up

**PUBLIC PARTICIPATION:** The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if fifteen copies of written material were submitted for distribution to the Board by September 9. Approximately 20 seats will be available for the public and media.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: August 19, 1997.

**Elaine Bunten-Mines,**

*Director, Program Office.*

[FR Doc. 97–22483 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### August 1993 Tampa Bay Oil Spill: Notice of Availability of a Final Damage Assessment and Restoration Plan and the Environmental Assessment of That Plan

**AGENCIES:** National Oceanic and Atmospheric Administration (NOAA), Commerce, United States Department of the Interior (DOI), and Department of Environmental Protection, State of Florida (Florida DEP).

**ACTION:** Notice of availability of a final damage assessment and restoration plan and of an environmental assessment of that plan.

**SUMMARY:** Notice is given that the document entitled *Final Damage Assessment and Restoration Plan for the 1993 Tampa Bay Oil Spill, Volume I—Ecological Injuries* (Final DARP, Volume I) has been approved by the NOAA, DOI, and Florida DEP and is available to the public. This document is the first part of the damage assessment and restoration plan to be completed by the State and Federal natural resource trustees to assess natural resource damages for the injury, loss, destruction and lost use of natural resources which resulted from the August 1993 oil spill in Tampa Bay, Florida. The Final DARP, Volume I, identifies the methods that will be used to restore and compensate for natural resources injuries and losses of an ecological nature.

**ADDRESSES:** Requests for copies of the Final DARP, Volume I, should be sent to Jim Jeansonne of NOAA Damage Assessment Center, 9721 Executive Center Drive N., Suite 134, St. Petersburg, FL 33702, or Jane Urquhart-Donnelly of the Florida DEP, Bureau of Emergency Response, 8407 Laurel Fair Circle, Rm. 214, Tampa, FL 33610.

**FOR FURTHER INFORMATION CONTACT:** Jim Jeansonne of the NOAA Damage Assessment Center, (813) 570–5391 or Jane Urquhart-Donnelly of the Florida DEP, (813) 744–6462.

**SUPPLEMENTARY INFORMATION:** On August 10, 1993, at approximately 5:45 a.m., the tank barge "OCEAN 255" and the tank barge "B–155" collided with the freighter "BALSA 37" just south of Mullet Key in lower Tampa Bay, Florida. The collision resulted in damage to the vessels and the discharge of approximately 32,000 gallons of Jet A fuel, diesel, and gasoline, and 330,000 gallons of #6 fuel oil, into Tampa Bay. A number of different natural resources were eventually exposed to oil as a result of these discharges, including mangroves, seagrasses, salt marshes, birds, sea turtles, shellfish beds, bottom sediments, sandy shorelines and the estuarine water column, with a variety of direct injuries and lost uses of natural resources documented to have resulted from such exposure.

The incident is subject to the authority of the Oil Pollution Act of 1990, 33 U.S.C. 2701–2761 (OPA), the Federal Water Pollution Control Act, 33 U.S.C. 1321 et seq. (FWPCA) and the Florida Pollutant Discharge and Control Act, Fla. Stat. 376.121. NOAA, DOI, and Florida DEP are trustees for natural resources pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., OPA, the FWPCA, subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600–300.615, and, in the case of the Florida DEP, the Florida Pollutant Discharge and Control Act, Fla Stat. 376.121 (1994), and in the case of the Federal trustees, Executive Order 12777.

The Final DARP, Volume I, is the assessment and restoration plan developed by the trustees to address the direct injuries to natural resources and the interim losses of ecological resource services caused by the spill. This final document also includes the Federal trustees' Environmental Assessment (EA) of the restoration plan pursuant to the National Environmental Policy Act (NEPA). The EA, which is fully integrated into the Final DARP, Volume I, represents the Federal trustees' evaluation of the likely impacts of alternatives proposed for resource recovery and compensation on the human environment. The EA was considered by the federal trustees in making determinations required by NEPA and decisions on the restoration plan for ecological injuries.

In developing the assessment and restoration plan for ecological injuries, the trustees prepared and publicly released a proposed plan, the Draft DARP, Volume I, dated December 1995 (Draft DARP). Notices published in the Federal Register on January 19, 1996 (61 Fed. Reg. 1357) and in the *St. Petersburg Times*, a newspaper of general circulation among communities in the Tampa Bay area, on January 7, 1996 announced the availability of the Draft DARP and a 45 day period for public comment on the proposed plan. Copies of the Draft DARP were also available for public review at the St. Petersburg Public Library, Main Library Reference Dept., in St. Petersburg, FL,

during the public review period. The period for public review of the document ended on March 4, 1996.

**Comments and Responses**

The trustees received two letters commenting on the Draft DARP. Both letters presented comments on the assessment and restoration plan proposed for bird injuries at Section 4.4 of the Draft DARP. The comments presented in these letters were considered by the trustees in making decisions on the final plan. Principal comments and responses are summarized in Section 7.0 of the Final DARP, Volume I. The comments received and the trustees responses thereto are also discussed in this notice.

**Procedure To Assess Bird Injuries**

*Comment:* One commenter criticized the procedure proposed to assess injuries to birds (number of oiled/injured birds treated at rehabilitation centers times correction factor of two) on several grounds. The commenter considered rehabilitation center records inadequate alone to assess the bird injuries. To properly account for all bird losses, the commenter felt a determination of carcass stranding and recovery rates based upon systematic surveys would be required. The commenter questioned the Draft DARP's view that the recovery rate for oiled birds was likely high for the Tampa Bay spill, particularly for brown pelicans. Further, the correction factor approach was characterized as unscientific and its use in the DARP was questioned where, in the commenter's view, more reliable methods were available at reasonable cost.

*Response:* The trustees realize that more birds were likely affected by the spill than were documented or accounted for in the rehabilitation center records. Sublethal effects to individual birds exposed to oil do occur and some birds may fail to rejoin wild populations and breed after release. The inability of assessment activities to comprehensively account for all birds injuries following an oil spill is a common problem, particularly where seabirds are affected. The correction factor approach addresses these uncertainties and is based, in part, on experience gained in the Exxon Valdez oil spill. It also reflects circumstances or facts associated with the Tampa Bay spill which indicate the effects of this spill on birds, including brown pelicans, may have been more limited than in other oil spill situations. The intense response efforts, the density and use patterns of humans in the impact areas, the bird species involved, and timing of the spill relative to the nesting and fledging of young are among the factors which increased the likelihood that oiled birds would be detected, with subsequent documentation of their species and condition and opportunity for their rehabilitation. For the Tampa Bay oil spill, the trustees consider the correction factor approach to represent a reasonable and valid adjustment to account for oiled birds that would not have been detected.

The trustees are aware that there are other ways to approach an assessment of bird injuries, and that other procedures can provide information for use in such an assessment, including models or systematic surveys. The trustees considered some of these other options early in the assessment process, however, given the particular circumstances of this spill and facts suggesting that its impact on birds was relatively small vis-a-vis local populations, the simplified procedure is preferable to more complex and costly procedures.

*Comment:* The same commenter noted that the Draft DARP did not specifically address the survival rates of oiled birds following rehabilitation.

*Response:* This was an oversight by the trustees and has been corrected in the Final DARP by including return rates and other information on injured brown pelicans which were banded and released following their rehabilitation.

**Restoration Plan for Birds**

*Comment:* The same commenter challenged the proposed selection of the 'no action' alternative to achieve primary restoration of bird injuries. The commenter noted alternatives were available to the trustees which could positively affect or benefit the recovery of affected bird populations. The commenter also questioned whether the restoration planned for mangroves and beaches, as presented in the Draft DARP, would really assist with natural recovery from direct injuries to birds.

*Response:* These comments were appropriate. Upon further review of the Draft DARP, the trustees realized that the restoration plan for birds did not make the appropriate distinction between restoration actions to address primary injuries versus restoration actions to compensate for interim losses. This problem was reflected throughout Section 4.4.6 in the Draft DARP, including in the statement of restoration objectives, the presentation of restoration alternatives and the identification of preferred actions in the restoration plan for birds. In the Final DARP, Volume I, the restoration plan for birds at Section 4.4.6 has been revised and reorganized to correctly present and consider primary restoration actions rather than compensatory alternatives in addressing the direct injuries to birds. As a result, primary restoration actions now consist of alternatives that can achieve direct restoration of birds. Restoration of birds to the environment is to be accomplished by actions which will either increase the number of birds in the Tampa Bay area, or decrease the number of injuries to birds that might remove them from the environment.

In the Final DARP, the "no action" alternative is selected for compensatory restoration because the interim losses associated with bird injuries are considered to be of short duration and adequately addressed in the Final DARP by restoration actions selected to address injuries to mangroves, salt marshes, oyster reefs and seagrasses. The changes to Section 4.4.6 are consistent with the injury and damage assessment for birds. Appendix F to the Final DARP contains a more detailed description of the revisions made to Section 4.4.6.

*Comment:* The same commenter felt it inappropriate to include the operation of wildlife rehabilitation centers as a possible restoration action for birds, for several reasons. The commenter noted rehabilitated birds, particularly those rehabilitated following oiling, are not "healthy" birds and are not replacements for healthy birds injured due to an oil spill. He questioned the degree to which funding of rehabilitation actions would directly benefit the recovery of bird populations in the future, including during future spills, and the ability of the trustees to scale or determine those benefits in defining restoration actions. The commenter believes these actions are more appropriate for consideration in the context of oil spill response preparation and planning, rather than as restoration actions for birds.

*Response:* The trustees are aware that rehabilitation of injured birds, either after being oiled by a spill or from injury due to other causes, does not always restore a bird to a fully functional condition. However, when properly permitted and operated, bird rehabilitation centers are currently considered by both federal and Florida natural resource management agencies to be reasonably effective in returning birds to a condition where they are fit to survive in the wild. The trustees are using the estimated costs of rehabilitating 732 birds for release into the wild to replace the same number of birds injured by this spill.

*Comment:* This commenter addressed specific restoration alternatives

considered in the Draft DARP. He observed that endangered bird species recovery projects have the potential to benefit bird populations. He noted that predator control actions can be an effective tool in bird management programs. He also felt the Draft DARP's characterization of captive breeding programs as costly, ineffective, and of questionable success was overbroad and should be clarified as related to this spill situation.

*Response:* The trustees agree that endangered bird species recovery projects have the potential to benefit bird populations. However, this spill had no apparent direct or indirect effect on any endangered bird species in the Tampa Bay area. This alternative was eliminated from further consideration on that basis. With respect to predator control, the trustees are aware that some predator control is practiced in the Tampa Bay area but there are complex issues involved in the control of one species for the benefit of another. Such actions risk changes to ecological dynamics in target areas and can lead to unforseen ecosystem disruptions. Further, in this instance, it is not clear to the trustees that such actions would, in fact, enhance long-term recruitment of relevant bird populations. The trustees are also concerned about the cost of implementing such actions. In the Final DARP, this option is not selected. Finally, the trustees' views on captive breeding programs have been clarified in the Final DARP.

*Comment:* The second commenter expressed strong support for training of rehabilitation facility personnel and volunteers in oiled wildlife management as a restoration option for birds. The commenter advocated training of Tampa and Boca Ciega Bay wildlife rehabilitators and their volunteers in the proper operation of an emergency facility and in the latest techniques in rehabilitating oiled wildlife of various species, noting that such actions would provide a larger pool of state permitted rehabilitators trained to implement emergency oil spill response operations.

*Response:* The trustees agree that training of rehabilitation facility personnel and volunteers, such as the commenter described, can enhance bird rescue and rehabilitation capabilities in the community and prevent bird mortalities in the future. Accordingly, training activities of this nature are within the scope of restoration actions that may be implemented in accordance with the Final DARP, Volume I, to restore or facilitate the recovery of birds injured by the spill. Selected restoration options, identified at Section 4.4.6.A, include using funds recovered to augment the operations of existing bird rehabilitation organizations and network in the Tampa Bay area (Alternative 5), to ensure existing bird and wildlife rescue equipment is maintained (Alternative 6), to acquire equipment for small spill response support (Alternative 7), and/or to support removal of monofilament fishing line from bird habitats in Boca Ciega Bay (Alternative 8). In implementing the restoration plan for birds, final funding decisions will be based primarily on the relative ability of candidate projects to meet the primary restoration objective identified for birds and the funds available to implement restoration actions for birds.

*Comment:* The second commenter also requested that the National Audubon Society of Tampa be eligible for funding to continue collecting baseline data on bird species distribution in the area noting that this data could be used to calculate future damages.

*Response:* As outlined in the Final DARP, Volume I, the restoration plan to be implemented for birds will apply recovered funds to augment existing bird rescue or rehabilitation capabilities and/or support removal of fishing line from bird habitats in the area impacted by the spill. These activities address the injuries to birds caused by the spill by ensuring that, in the future, more birds will be restored to the environment and/or fewer birds will be lost by reducing a source of bird mortalities. While the trustees' recognize the importance of baseline data on bird populations, the restoration plan is focused on actions to restore or replace injured birds.

Dated: August 15, 1997.

**Nancy Foster,**

*Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 97–22335; Filed 8–22–97; 8:45 am]

BILLING CODE 3510–ES–P

## DEPARTMENT OF COMMERCE

### Technology Administration

### Technology Administration Performance Review Board Membership, September 1997

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate Appointing Authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

The following is the full membership of the Board:

Kelly H. Carnes (NC), Deputy Assistant Secretary for Technology Policy, Technology Administration, Washington, DC 20230, Appointment Expires: 12/31/98

Karl E. Bell (C), Deputy Director of Administration, Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Elaine Bunten-Mines (C), Director, Program Office, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Andrew J. Fowell (C), Associate Director for Construction and Building, Building and Fire Research Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/97

Rosalie T. Ruegg (C), Director, Economic Assessment Office, Advanced Technology Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Stephen W. Freiman (C), Chief, Ceramics Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Kent Hughes, Associate Deputy Secretary of Commerce, U.S. Department of Commerce, Washington, DC 20230, Appointment Expires: 12/31/99

Richard F. Kayser, (C), Chief, Physical and Chemical Properties Division, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/98

Ronald E. Lawson (C), Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, VA 22161, Appointment Expires: 12/31/99

Robert I. Scace, Chair (C), Director, Office of Microelectronics Programs, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/97

Donald B. Sullivan (C), Chief, Time and Frequency Division, Physics Laboratory, National Institute of

Standards and Technology, Boulder, CO 80303; Appointment Expires: 12/31/98

Samuel P. Williamson (C), Deputy Director, Office of Systems Development, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, Appointment Expires: 12/31/98

**Gary Bachula,**

*Acting Under Secretary for Technology, Technology Administration, Department of Commerce.*

[FR Doc. 97–22408 Filed 8–22–97; 8:45 am]

BILLING CODE 3510–18–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0002]**

### Submission for OMB Review; Comment Request Entitled Solicitation Mailing List Application (SF 129)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0002).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation Mailing List Application (SF 129). A request for comments was published at 62 FR 33605, on June 20, 1997. No comments were received.

**DATES:** *Comment Due Date* September 24, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0002 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for prospective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average .58 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 243,000; responses per respondent, 4; total annual responses, 972,000; preparation hours per response, .58; and total response burden hours, 563,760.

*Obtaining copies of proposals:* Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application (SF 129), in all correspondence.

Dated: August 20, 1997.

**Sharon A. Kiser,**

*FAR Secretariat.*

[FR Doc. 97–22474 Filed 8–22–97; 8:45 am]

BILLING CODE 6820–34–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0011]**

### Submission for OMB Review; Comment Request Entitled Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0011).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). A request for public comments was published at 62 FR 33606, June 27, 1997. No comments were received.

**DATES:** Comment Due Date September 24, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washingon, DC 20503, and a copy to General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0011 in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available

data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average *24* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *12,000*; responses per respondent, *.5*; total annual responses, *6,000*; preparation hours per response, *24*; and total response burden hours, *144,000*.

*Obtaining copies of proposals:* Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: August 20, 1997.

**Sharon A. Kiser,**

*FAR Secretariat.*

[FR Doc. 97–22475 Filed 8–22–97; 8:45 am]

BILLING CODE 6820–34–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for Facilities Development Necessary to Support the Homeporting of a Nimitz-Class Aircraft Carrier at the Naval Station, Mayport, Florida

Pursuant to section 102(2)C of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR parts 1500–1508), the Department of the Navy announces its findings relative to the analysis of the facilities development necessary to support the homeporting of a Nimitz-class aircraft carrier at Naval Station (NAVSTA), Mayport, Florida. This analysis was required by the National Defense Authorization Act for Fiscal Year 1993, because under existing carrier force structure plans, all conventional carriers (CVs) will be replaced by nuclear-powered carriers (CVNs) at the end of the CVs service life. NAVSTA Mayport, which has long been a homeport for conventional aircraft carriers, is currently homeport to the USS Kennedy. The analysis evaluates the potential environmental impacts associated with development of facilities to support possible CVN Homeporting at NAVSTA Mayport in the year 2010.

A notice of intent was published in the **Federal Register** on October 7, 1993, indicating that Navy would prepare a Programmatic Environmental Impact Statement (PEIS) evaluating the Facilities Development Necessary To Support Potential Aircraft Carrier Homeporting at the Naval Station, Mayport, Florida. A public scoping meeting was held October 26, 1993 in Neptune Beach, Florida to determine the scope of significant issues to be examined in the Draft PEIS (DPEIS). The DPEIS was filed with the U.S. Environmental Protection Agency (EPA) on March 15, 1996 and was distributed to agencies and officials of federal, state, and local governments, citizen's groups and associations, media, public libraries, and interested parties for review and comment. The notice of filing and notice of public availability appeared in the **Federal Register** on March 22, 1996. The period of public review and comment on the DPEIS was from March 22, 1996 through May 13, 1996. A public hearing was held on April 24, 1996 in Neptune Beach, Florida. Comments on the DPEIS were received in three forms: (1) Letters, (2) written comments received at the public hearing, and (3) oral statements made at the hearing. Comments included concerns regarding wildlife impacts, dredging impacts, water quality, and housing impacts. Those comments and Navy responses were incorporated into the Final PEIS (FPEIS), which was filed with the EPA on March 7, 1997, and distributed for public review. The Notice of Filing appeared in the **Federal Register** on March 14, 1997. The period of public review on the FPEIS ended on April 14, 1997.

The PEIS evaluated the reasonable alternatives to implementing CVN homeporting at NAVSTA Mayport and the potential environmental impacts of new construction, facilities modification, dredging, and operation of a CVN at NAVSTA Mayport. In addition to the various alternatives discussed in the PEIS, a "No Action" alternative was evaluated. In the "No Action" alternative, NAVSTA Mayport would not be evaluated as a second potential East Coast CVN Homeport, thus leaving all CVNs homeported in Norfolk, Virginia. This alternative was dismissed because it fails to meet the requirements of Pub. L. 102–484 which requires Navy to prepare a plan which could develop NAVSTA Mayport as a Nimitz-Class aircraft carrier homeport.

NAVSTA Mayport has two conventionally-powered aircraft carrier berthing wharves, Wharf C–1 and Wharf C–2, neither of which are currently able to accommodate CVN draft, electrical, and maintenance requirements. Wharf C–1 was eliminated from further evaluation because it provides no berthing or infrastructure advantage over Wharf C–2 and because Wharf C–2 has better opportunities for providing security. Three berthing alternatives were evaluated throughout the PEIS: Wharf C–2, Wharf F (an industrial maintenance wharf), and a dual capability concept where both Wharf C–2 and Wharf F are used. The dual capability configuration was chosen as the preferred alternative because it offers the most operational flexibility, allowing continued use of Wharf F as an industrial rework facility, even when the carrier is in port.

New construction necessary to support the depot-level maintenance requirements of a CVN homeported at NAVSTA Mayport would include a depot-level maintenance facility (DMF). The DMF would comprise three main components: Controlled Industrial Facility (CIF), Ship Maintenance Facility (SMF), and Maintenance Support Facility (MSF). The DMF and its surrounding areas would have to be capable of supporting a work force of approximately 1,000 workers per day. This would include shipboard workers, within the facility, and the project management team. The SMF facility would house all non-controlled propulsion plant work, material inspection and storage, and pure water production. Radiological work to be performed at the DMF would occur in the CIF, while the MSF would include the administrative functions.

Pierside improvements discussed in the PEIS would include required modification to the two wharves considered for berthing of a CVN, Wharf C–2 and Wharf F. Structural analysis of each wharf for the dredge depth of 50 feet below Mean Lower Low Water (mllw), for the additional loading introduced by a 100-ton mobile crane at the wharves, and for more rigorous mooring standards were performed to assist in the wharf improvements recommendations and the analysis results were summarized in the PIES. Assessments of the existing infrastructure (utilities) were also performed and the study results summarized in the PEIS.

The Jacksonville District U.S. Army Corps of Engineers (USACE) completed a study in 1994 of dredged material disposal areas for the Navy. The dredged material disposal alternatives considered for the potential homeporting at NAVSTA Mayport included: (1) The Jacksonville offshore dredged material disposal site (ODMDS), (2) diked upland disposal, (3) beach nourishment, and (4) beneficial uses.

Sediment quality, sediment volume, and the practicality and feasibility of disposal were considered during the evaluation of dredged material disposal alternatives. The preferred alternative method and site selected for the disposal of new work and maintenance dredged material is the Jacksonville ODMDS. All other methods and sites discussed in the USACE dredge study were dismissed as being too costly or not feasible for the potential homeporting project. New work dredging would utilize both hopper dredging and clam shell dredging methods.

The ODMDS is located approximately five miles southeast of the entrance marker for the Jacksonville Harbor Channel. An ODMDS Site Management and Monitoring Plan (SMMP) prepared by EPA limits annual dredged material disposal volumes to two million cubic yards (MCY). Navy's plan to dispose of approximately 5.7 MCY in 18 months would exceed this limitation. In order not to exceed the SMMP limits, the Navy could extend the dredging work period to 36 months or more, or should Navy wish to proceed with the 18 month disposal plan, the Navy would have to conduct additional dispersion predictive model studies. If the results of these model studies demonstrated that sufficient dispersive characteristics could be achieved, the disposal volume restriction on ODMDS could be waived or modified. Also, sediment sampling and bioassay testing of dredged material is required by the EPA prior to authorization of offshore disposal. Samples have been taken from the Mayport turning basin and the entrance channel. The EPA has reviewed the sediment and water quality analysis from these areas and has concurred with the finding that the material is suitable for ocean disposal in the Jacksonville ODMDS in accordance with the Marine Protection Research and Sanctuaries Act. This concurrence is valid through March 1999, contingent upon finalization of the SMMP, therefore, if a future proposal is made to homeport a CVN at NAVSTA Mayport, additional sediment characterization would be required.

Impacts from construction and operations of proposed facilities were evaluated in the PEIS. Other impacts evaluated included those associated with the increased CVN crew size and their dependents, construction personnel, and maintenance facilities personnel. A summary of the physical, biological, and socioeconomic impacts that would be caused by the potential action follows.

The St. Johns River entrance channel, the entrance channel to NAVSTA Mayport, and the turning basin would be dredged to 50 feet below mllw, plus two-foot overdredge, to accommodate the water depth requirements for a CVN. The total volume of the dredged material would be approximately 5.7 MCY. Dredging and dredged material disposal operations would temporarily cause turbidity in the water. Navy would comply with the provisions of Section 10 of the Rivers and Harbors Act of 1899, Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, and Section 404 of the Clean Water Act, by obtaining all required permits from the USACE, the Florida Department of Environmental Protection (FDEP), and the St. John's River Water Management District.

Construction activities would disturb approximately 20 acres of land, some of which have been previously disturbed. Potential short-term erosion would be minimized by implementing erosion control measures as required by the National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activity. Since more than five acres would be disturbed for the construction, a Notice of Intent (NOI) would be submitted to EPA, Region IV should a future proposal be made. The NOI would describe preparation and implementation of a Storm Water Prevention Plan. Accidental spills of hazardous materials during construction and operation of facilities would be contained, and remediated, following existing Navy contingency plans. These measures and plans would also protect water resources in the area.

Short-term impacts to local air quality would be expected from operation of heavy construction equipment, including dredges. No permanent deterioration of air quality would result from the associated construction activities. Operation of the maintenance facilities would produce welding fumes, cleaning solution fumes, and other emissions. All sources would comply with the air regulations in the Florida Administrative Codes. Emissions from dredging would possibly be above *de minimis* levels for the ozone precursor nitrogen oxide ($NO_X$) and a conformity determination would be prepared if Duval County is still classified as a maintenance area should the project be proposed. Further mitigative measures such as extending the work period to reduce annual emissions could be required as a result of the analysis. Maintenance facilities would produce emissions from paint booths and solvents. Emissions controls will be used as required by the FDEP permits. Construction and operation of facilities would generate noise in the waterfront area. Noise levels would be similar to existing levels in this industrial area.

Wastewater from the CVN and maintenance facilities would be discharged to existing shore facilities. The NAVSTA Mayport wastewater treatment plant has capacity for the anticipated slight increase in volume and would treat the water to permit standards before discharge. Industrial/bilgewater (including oily wastewater) production is less for a CVN than a CV and would be pretreated at the oily wastewater treatment plant.

Four acres of existing landscaped vegetation would be removed during construction. Open areas of the sites would be revegetated following construction. Dredging would affect aquatic species, causing some to relocate temporarily. The feeding areas of some birds would be temporarily disturbed.

Plankton and benthos in the turning basin would be temporarily affected by wharf construction and dredging. Dredged material disposal at the ODMDS would also temporarily affect biological communities. These communities would recover shortly after the activities. It is not anticipated that threatened and endangered species would be adversely affected by construction, dredging, or facilities operations. Particular attention will be paid during dredging to safeguard marine mammals (e.g., manatees and right whales) by controlling timing and speeds, and by employing lookouts for early detection.

Should Navy pursue future homeporting of a CVN at NAVSTA Mayport, coordination would occur with U.S. Fish and Wildlife Service, National Marine Fisheries Service, EPA, FDEP and other state regulatory agencies to effect full compliance with the Marine Protection, Research, and Sanctuaries Act, Endangered Species Act, and the Fish and Wildlife Coordination Act.

In accordance with section 106 of The National Historic Preservation Act, potential impacts to historic and archeological resources have been

evaluated. No known archeological or historic architectural sites are documented in the proposed construction or facility improvement areas. No historic or archeological sites are expected to be encountered during the dredging activity; however, should sites or artifacts be encountered during dredging, the activities would cease and site inspections would be performed. The State of Florida Historic Preservation Officer has concurred with this analysis.

A CVN has a crew size of 3,217 persons which is 102 persons more than that of a CV. The potential increase in personnel and dependents from replacing an existing CV with a CVN would be approximately 217 persons. Most of the additional crew would live aboard the carrier. On-base family housing resources are anticipated to remain at full occupancy, and the additional personnel with families would probably seek housing in residential areas near NAVSTA Mayport.

The maintenance facilities would employ approximately 1,000 workers during a six month maintenance availability. These employees would live in rental housing (apartments, hotels, motels, and other). This would have a positive economic effect on the temporary housing market.

Most of the utilities requirements of the carrier can be supplied by the existing infrastructure within the station. Additional electrical substations and connections to wharf outlets would be required. NAVSTA Mayport can supply the additional water supply requirement of 32,000 gallons per day (GPD), and wastewater treatment facilities have approximately 0.7 million gallons per day (MGD) available capacity.

Approximately 15,000 pounds per year of hazardous waste would be generated from CVN activities in port, approximately the same amount as for a CV. The waste storage facility on base has adequate capacity to store the waste. Construction of maintenance facilities located southwest of Wharf F could impact a contaminated site [Solid Waste Management Unit (SWMU #23)]. Should this occur, an additional investigation and possible cleanup may be required.

A minor increase in vehicle trips would result from homeporting the CVN, and these would be distributed throughout the area. Roadway improvements to Mayport Road and Atlantic Boulevard proposed by the Jacksonville Transportation Authority would improve levels of service on area roadways. The proposed Wonderwood Expressway would also improve access in the area of the Naval Station.

Pursuant to Executive Order 12898, Environmental Justice, potential environmental and economic impacts on minority and low-income persons and communities were assessed. No disproportionate concentrations of minority or low-income populations were identified in the area of impact of the potential facilities and operations. Additionally, Navy has ensured that opportunities for community participation (including minority and low-income persons and populations) in the NEPA process have been provided.

The population increase associated with CVN homeporting would place minor additional demands on housing and community services, such as police, fire, recreation, and education. These effects would be a small part of the total impact from projected population increases in the Jacksonville area from other (non-Navy) causes.

The completion of this PEIS fulfills the Navy requirements to analyze NAVSTA Mayport as a second East Coast homeport for a Nimitz-Class aircraft carrier as required by Public Law 102–484. The analysis presented in the PEIS and supporting studies indicate that NAVSTA Mayport is a feasible homeport site should the Navy define such a need in the future providing the identified construction, renovations, and dredging can be accomplished.

Should the Navy decide to pursue facilities development necessary to support a CVN at NAVSTA Mayport, additional NEPA analysis would be conducted defining the action as then proposed. If the proposed dredging would occur after March 1999, bioassay analysis will be required for all new work dredged material. Also, should the Navy exceed the OSMDS SMMP annual dredged material disposal limits of two million cubic yards per year, dispersion modeling will need to be performed to determine if the annual disposal volume limit on the OSMDS site may be modified or waived. Finally, a conformity determination for the ozone precursor $NO_x$ would be prepared if Duval County were still classified as a maintenance area when the project was proposed.

Questions regarding the Environmental Impact Statement prepared for this action may be directed to Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010 (Attn: Mr. Ronnie Lattimore, Code 064RL), telephone (803) 820–5888.

Dated: August 19, 1997.

**Duncan Holaday,**

*Deputy Assistant Secretary of the Navy, (Installations and Facilities).*

[FR Doc. 97–22492 Filed 8–22–97; 8:45 am]

BILLING CODE 3810–FF–M

## DEPARTMENT OF DEFENSE

### Department of the Navy, DoD

### Notice of Availabliity of Inventions for Licensing; Government Owned Inventions

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Copies of the patent applications cited are available from the Office of Naval Research. Requests for copies of the patent applications must include the patent application serial number.

*U.S. Patent Application Serial No. 08/508,653:* Rapid Immunoassay for Cariogenic Bacteria; filed July 28, 1995.

*U.S. Patent Application Serial No. 08/766,203:* Rapid Immunoassay for Cariogenic Bacteria; filed December 12, 1996.

*International Patent Application No. PCT/US96/12135:* Rapid Immunoassay for Streptococcus Mutans; filed July 23, 1996.

**FOR COPIES OF THE PATENT APPLICATIONS OR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: August 15, 1997.

**M.D. Sutton,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–22453 Filed 8–22–97; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy, DoD

### Notice of the Secretary of the Navy's Advisory Subcommittee on Naval History; Open Meeting

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee, will meet from 0800–1600 on September 18 and 0800–

1600 on September 19, 1997 in Building 1 of the Naval Historical Center, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History on 26 and 27 September 1996, and to make comments and recommendations on these activities to the Secretary of the Navy.

**FOR FURTHER INFORMATION CONTACT:** The Director of Naval History, 901 M Street SE, Bldg. 57 WNY, Washington, DC, 20374–5060, or call Dr. William S. Dudley at (202) 433–2210.

Dated: August 14, 1997.

**M.D. Sutton,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–22455 Filed 8–22–97; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy, DoD

### Notice of Intent to Grant Exclusive Patent License; Cary Medical Corporation

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Cary Medical Corporation, a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries the Government owned inventions described in *U.S. Patent Application Serial No. 08/508,653:* Rapid Immunoassay for Cariogenic Bacteria; filed July 28, 1995; *U.S. Patent Application Serial No. 08/766,203:* Rapid Immunoassay for Cariogenic Bacteria; filed December 12, 1996; and *International Patent Application No. PCT/US96/12135:* Rapid Immunoassay for Streptococcus Mutans; Filed July 23, 1996.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: August 15, 1997.

**M.D. Sutton,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–22456 Filed 8–22–97; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy, DoD

### Notice of Performance Review Board Membership

**SUMMARY:** Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide full and impartial review of the annual SES performance appraisal prepared by the Senior Executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ALTWEGG, D. M. MR.
AMERAULT, J. F. RADM
ANDERSON, J. MAJGEN
ANDRIANI, C. R. MR.
ANGRIST, E. MR.
ATKINS, J. A. MR.
BAILEY, D. C. MR.
BALDERSON, W. MR.
BLATSTEIN, I. M. DR.
BLICKSTEIN, I. N. MR.
BONWICH, S. M. MR.
BOYER, R. R. MR.
BRAATEN, T. A. MAJGEN
BRADLEY, L. A. MS.
BRANCH, E. B. MR.
BRANT, D. L. MR.
BROOKE, R. K. MR.
BROWN, P. F. MR.
BUCKLEY, B. CAPT
BUONACCORSI, P. P. MR.
BURT, J. A. MR.
CALI, R. T. MR.
CARPENTER, A. W. MS.
CATALDO, P. R. MR.
CAMP, J. R. MR.
CARTER, R. L. MR.
CASSIDY, W. J. MR.
CATRAMBONE, G. MR.
CHENEVEY, J. V. RADM
CHRISTIE, D. P. HON.
CLARK, C. C. MS.
COFFEY, T. DR.
COLE, D. A. MR.
COLLIE, J. D. MR.
COMMONS, G. L. MS.
CONRAN, T. C. MR.
COSTELLO, J. N. MR.
COYLE, M. T. RADM
CRAINE, J. W. RADM
CUDDY, J. V. MR.
DECKER, M. H. MR.
DECORPO, J. DR.
DEMARCO, R. DR.
DESALME, J. W. MR.
DISTLER, D. MR.
DIXSON, H. L. MR.
DOAK, R. MR.
DOHERTY, L. M. DR.
DOTHARD, J. J. MR.
DOUGLASS, J. HON.
DOUGLASS, T. E. MR.
DOWD, T. MR.
DRAIM, R. P. MR.
DUDDLESTON, R. J. MR.
DUDLEY, W. S. DR.
DURHAM. D. L. DR.
EATON, W. D. MR.
ERWIN, W. B. MR.
EVANS, G. L. MS.
FELTON, R. M. MR.
FIOCCHI, T. C. MR.
FITZGERALD, R. J. MR
FORD, F. B. MR.
GAFFNEY, P. RADM.
GARVERT, W. C. MR.
GEIGER, C. G. MR.
GIST, W. J. MR.
GOLDSCHMIDT, J. X. MR.
GOTTFRIED, J. M. MS.
GROSSMAN, J. C. MR.
HAALAND, S. MR.
HAMMES, M. C. MR.
HANDEL, T. H. MR.
HANNAH, B. W. DR.
HARTWIG, E. DR.
HATHAWAY, D. L. MR.
HAUENSTEIN, W. H. MR.
HAUT, D. G. MR.
HAYNES, R. S. MR.
HEATH, K. S. MS.
HENRY, M. G. MR.
HICKS, S. N. MR.
HILDEBRANDT, A. H. MR.
HOLADAY, D. A. MR.
HONIGMAN, S. S. HON.
HOWELL, D. S. MS.
HUBBELL, P. C. MR.
HUCHTING, G. A. RADM
JACOBSON, D. J. MR.
JOHNSTON, K. J. DR.
JUNKER, B. DR.
KASKIN, J. D. MR.
KELLY, L. J. MR.
KOTZEN, P. S. MS.
KRASIK, S. A. MS.
KREITZER, L. P. MR.
KUESTERS, J. J. MR.
LANGSTON, M. J. MR.
LARSEN JR., D. P. MR.
LAUX, T. E. MR.
LEACH, R. A. MR.
LEBOEUF, G. G. MR.
LEFANDE, R. DR.
LEGGIERI, S. R. MS.
LEWIS, R. D. MS.
LIPPERT, K. W. RADM
LOFTUS, J. V. MS.
LOPATA, F. A. MR.
LOWELL, P. M. MR.
LYNCH, J. G. MR.
MACHIN, R. C. MR.
MANGELS, K. H. MR.
MARTIN, R. J. MR.
MASCIARELLI, J. R. MR.
MATTHEIS, W. G. MR.

MCELENY, J. F. MR.
MCKISSOCK, G. S. MAJGEN
MCMANUS, C. J. MR.
MCNAIR, J. W. MR.
MCNAIR, S. M. MS.
MEADOWS, L. J. MS.
MERRITT, M. M. MR.
MESSEROLE, M. MR.
MILLER, K. E. MR.
MOELLER, R. L. RADM
MOHLER, M. MR.
MOLZAHN, W. MR.
MONTGOMERY JR., H. E. MR.
MOORE, S. B. MR.
MOY, G. W. DR.
MUNSELL, E. L. MS.
MURPHY, P. M. MR.
MUTH, C. M. MS.
MUTTER, C. A. LTGEN
NANOS, G. P. RADM
NEHMAN, J. MR.
NEMFAKOS, C. P. MR.
NEWTON, L. MS.
NICKELL, J. R. MR.
NUSSBAUM, D. A. MR.
OLIVER, D. T. VADM
OLSEN, M. A. MS.
O-NEILL, T. J. MR.
OSTER, J. W. LTGEN
PAIGE, K. K. RADM
PALM, L. M. LTGEN
PANEK, R. L. MR.
PAULK, R. D. MS.
PAYNE, T. MR.
PENNISI, R. A. MR.
PETERS, R. K. MS.
PHELPS, F. A. MR.
PIRIE JR., R. B. HON.
PFLUEGER, M. P. MR.
POE, L. L. RADM
PORTER, D. E. MR.
POWERS, B. F. MR.
RAMBERG, S. DR.
RATH, B. DR.
RIEGEL, K. W. DR.
ROARK, J. E. MR.
ROBINSON, P. M. RADM
RODERICK, B. A. MR.
ROSTKER, B. HON.
RYAN, D. CAPT
RYZEWIC, W. H. MR.
SAALFELD, F. DR.
SANDERS, W. R. MR.
SAUL, E. L. MR.
SAVITSKY, W. D. MR.
SCHAEFER, W. J. MR.
SCHNEIDER, P. A. MR.
SCHUSTER JR., J. G. MR.
SENTNER, R. P. MR.
SHAFFER, R. L. MR.
SHECK, E. E. MR.
SHEPHARD, M. R. MS.
SHIPWAY, J. F. RADM
SHOUP, F. E. DR.
SIMMEN, C. R. MR.
SILVA, E. DR.
SIRMALIS, J. E. DR.
SOMOROFF, A. R. DR.
STEWART, J. D. MAJGEN
STOREY, R. C. MR.
STUSSIE, W. A. MR.
SULLIVAN, M. P. RADM
THORNETT, R. MR.
THOMAS, R. O. MR.
THOMPSON, R. C. MR.
THOMPSON, R. H. MR.
THROCKMORTON, E. L. MR.
TINSTON, W. J. RADM
TISONE, A. A. MR.
TOMPKINS, C. L. MR.
TRAMMELL, R. K. MR.
TULLAR, E. W. MR.
TURNQUIST, C. J. MR.
UHLER, D. G. DR.
VAUGHAN, W. DR.
VERKOSKI, J. E. MR.
WAGNER, G. F. A. RADM
WELCH, B. S. MS.
WELLER, P. B. MR.
WESSEL, P. R. MR.
WHALEN, J. MR.
WHITEWAY, R. N. DR.
WHITMAN, E. C. DR.
WILLIAMS, G. P. MR.
WILLIAMS, M. J. MAJGEN
YOUNG, S. D. MS.
YOUNT, G. R. RADM
ZANFAGNA, P. E. MR.
ZEMAN, A. R. DR.
ZIMET, E. DR.

Dated: August 14, 1997.

**M.D. Sutton,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–22454 Filed 8–22–97; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs; Revision of the Need Analysis Methodology for the 1998–99 Award Year

**AGENCY:** Department of Education.

**ACTION:** Correction.

On May 29, 1997, the Assistant Secretary for Postsecondary Education published in the **Federal Register** (62 FR 29272), a notice of revision of the need analysis methodology for the 1998–99 award year. This notice corrects the May 29 document as follows:

On Page 29273, item 3, is corrected as follows—

(1) In the table titled "Dependent Students", line 18, column 3, 26,700 is corrected to read 25,700.

(2) In the table titled "Independent Students Without Dependents Other Than a Spouse", line 18, column 3, 26,700 is corrected to read 25,700.

(3) In the table titled "Independent Students With Dependents Other that a Spouse—Continued", line 14, column 3, 26,700 is corrected to read 25,700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Edith Bell, Program Specialist, General Provisions Branch, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, SW. (Room 3053, ROB–3), Washington, DC 20202–5444, telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: August 18, 1997.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–22519 Filed 8–22–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.063]**

### Federal Pell Grant Program

**AGENCY:** Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** This document updates Tables A and B in the notice published in the **Federal Register** on June 9, 1997 (62 FR 31488), for the Federal Pell Grant Program. The following information is to be included in Table A.

A. DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF STUDENT AID REPORTS (SARS) OR INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS)

| Who submits? | What is submitted? | Where is it submitted? | What is the deadline date? |
|---|---|---|---|
| Student | Free Application for Federal Student Aid (FAFSA) on the Web. | http://www.fafsa.ed.gov | *June 30, 1998. |

A. DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF STUDENT AID REPORTS (SARs) OR INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRs)—Continued

| Who submits? | What is submitted? | Where is it submitted? | What is the deadline date? |
|---|---|---|---|
| | Signature Page ..... | The address printed on the signature page. | August 14, 1998. |

*The deadline for submitting electronic transactions is prior to midnight (Central Time) on the deadline date. Transmissions must be completed and the records must be accepted for processing before midnight to meet the deadline. Transmissions started but not completed until after midnight are not considered on time.

Effective October 8, 1997, the addresses listed in Table B on page 31488 and 31489 to report Federal Pell Grant Student Payment Data will change to the following:

B. DEADLINE DATES FOR REPORTING FEDERAL PELL GRANT STUDENT PAYMENT DATA

| Where is it submitted? (old addresses) | Where is it submitted? (new addresses) |
|---|---|
| Regular Mail:<br>U.S. Department of Education, Student Aid Origination Team, PSS, P.O. Box 10800, Herndon, Virginia 20172–7009.<br>Commercial Couriers or Hand Deliveries:<br>U.S. Department of Education, Student Aid Origination Team, PSS, c/o PRC Inc., G–T01 PGRFMS/DMS, 12001 Sunrise Valley Drive, Reston, Virginia 20191–3423. | Regular Mail:<br>U.S. Department of Education, Student Aid Origination Team, PSS, P.O. Box 6565, Rockville, Maryland 20850–6565.<br>Commercial Couriers or Hand Deliveries:<br>U.S. Department of Education, Student Aid Origination Team, PSS, c/o Computer Data Systems, Inc., RFMS, Federal Pell Grant Program, Mail Stop 3200, One Curie Court, Rockville, Maryland 20850–4389. |

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn C. Butler, Program Specialist, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W. (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–730–8913 between 9 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: August 19, 1997.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–22429 Filed 8–22–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Management

**AGENCY:** Department of Education.

**ACTION:** Notice of Membership of the Performance Review Board (PRB).

**SUMMARY:** Notice is hereby given of the names of members of the Department of Education's PRB.

**FOR FURTHER INFORMATION CONTACT:** Althea Watson, Director, Executive Resources Team, Human Resources Group, Office of Management, Department of Education, Room 1135, FOB–10B, 600 Independence Avenue, SW, Washington, DC 20202, Telephone: (202) 401–0546. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive, including making recommendations on performance awards.

The PRB is also responsible for providing recertification recommendations for career SES appointees in accordance with section 3393a of Title 5, U.S.C. and section 317.504(f) of Title 5, Code of Federal Regulations. Recommendations on SES pay level adjustments shall also be made by the PRB.

### Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Gary Rasmussen, Chair, David Longanecker, Co-Chair, Mary Ellen Dix, Philip Link, William Haubert, Susan Craig, Steven Winnick, Carol Cichowski, Thomas Skelly, Ricky Takai, Larry Oxendine, Linda Paulsen, Maureen McLaughlin, John Higgins, Mary Jean LeTendre, Patricia Guard, Alicia Hoffman, Edward Fuentes, Dennis Berry, Mitchell Laine, David Frank, Linda Roberts, Raymond Pierce, Howard Moses, Jamienne Studley, Claudio Prieto. The following executives have been selected to serve as alternate members of the Performance Review Board: Hazel Fiers, Charles Hansen, Therese Dozier, Thomas Hehir.

Dated: August 20, 1997.

**Richard W. Riley,**

*Secretary of Education.*

[FR Doc. 97–22520 Filed 8–22–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–2126–000]**

### Cleveland Electric Illuminating Company; Notice of Filing

August 19, 1997.

Take notice that on August 6, 1997, the Cleveland Electric Illuminating Company tendered for filing an amendment in the above-referenced docket.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22432 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–355–002]**

### CNG Transmission Corporation; Notice of Compliance Tariff Filing

August 19, 1997.

Take notice that on August 14, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 1997:

Second Sub. Original Sheet No. 209
Substitute Original Sheet No. 211

CNG states that the purpose of this filing is to further revise CNG's mainline pooling service in two respects. As directed by the Commission in its July 30 Order, slip op. at 4, CNG omits Section 4.3 of Rate Schedule MPS from Sheet No. 209, which had referred to negotiation of the imbalance fee established by Section 4.1.A. CNG has also revised the treatment of imbalances in Section 6 of Rate Schedule MPS, "to reflect the assessment of imbalance penalties comparable to the penalties under Rate Schedules FT, IT, and MCS." July 30 Order, at 6. Specifically, CNG has revised Sections 4.1.A and Section 6.5 so that unresolved MPS-based imbalances will be subject to the same imbalance management provisions that are currently applicable to Wheeling Service under CNG's Rate Schedule MCS.

CNG states that copies of its filing have been mailed to the parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22444 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–448–000]**

### East Tennessee Natural Gas Company; Notice of Compliance Filing

August 19, 1997.

Take notice that on August 15, 1997, East Tennessee Natural Gas Company (East Tennessee), filed Second Revised Sheet No. 116. East Tennessee states that this filing is in compliance with Ordering Paragraph (B) of the Commission's February 27, 1997 Order on Remand in Docket Nos. RM91–11–006 and RM87–34–072. Order No. 636–C, 78 FERC ¶ 61,186 (1997).

East Tennessee further states that the revised tariff sheet establishes a new contract term cap of five years for its right-of-first-refusal tariff provisions consistent with the new cap established in Order No. 636–C. East Tennessee requests an effective date of September 15, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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 available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22449 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–444–000]**

### Notice of Complaint

August 19, 1997.

*Horsehead Resource Development Co., Inc.* v. *Transcontinental Gas Pipe Line Corporation.*

Take notice that on August 8, 1997, pursuant to Rule 207 of the Commission's rules of practice and procedure, 18 CFR Section 385.207 (1996) and Order No. 636–C, Horsehead Resource Development Co., Inc. (Horsehead) tendered for filing a petition for relief to modify the term of a firm transportation contract it has entered into with Transcontinental Gas Pipe Line Corporation (Transco).

Horsehead respectfully requests that the Commission shorten the length of a firm transportation contract it has entered into with Transco from twenty years to five years. Horsehead states that it is currently entitled to 2,200 Mcf per day of firm capacity from Transco under a contract which was renewed for a twenty-year term effective for the period November 16, 1995 through November 16, 2015. Horsehead states that the contract was renewed at a time when the twenty-year term-matching cap set forth in Order No. 636 was in effect. Since then, the Court of Appeals for the District of Columbia Circuit overturned the Commission's decision to impose a twenty-year cap.

On remand, the Commission substituted a five-year cap to be effective prospectively and stated that it will entertain on a case-by-case basis requests to shorten a contract term if a customer renewed a contract under the right-of-first-refusal process since Order No. 636 and can show that it agreed to a longer term renewal contract than it otherwise would have because of the twenty-year cap. Horsehead states that it would have entered into a contract extension with Transco for the far shorter duration of five years had the twenty-year term matching cap under Order No. 636 not been in effect.

Horsehead respectfully requests that the Commission grant its petition for relief to shorten the term of its firm transportation contract with Transco from twenty years to five years from November 16, 1995 (expiring November 16, 2000).

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,

888 First Street, N.E., Washington, D.C. 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 September 8, 1997. 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 September 8, 1997.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22446 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3887–000]**

### Long Island Lighting Company; Notice of Filing

August 19, 1997.

Take notice that on July 28, 1997, Long Island Lighting Company (LILCO) filed Service Agreements for Non-Firm Point-to-Point Transmission Service between:

(1) LILCO and ProMark Energy (Transmission Customer); and
(2) LILCO and PECO Energy Company-Power Team (Transmission Customer).

The Service Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 8, 1997, for the ProMark Energy and the PECO Company-Power Team Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customers.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22439 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–699–000]**

### Midcoast Interstate Transmission, Inc.; Notice of Application

August 19, 1997.

Take notice that on August 18, 1997, Midcoast Interstate Transmission, Inc. (MIT), formerly Alabama-Tennessee Natural Gas Company, 3230 Second Street, Muscle Shoals, AL 35661, filed an application under Section 7 of the Natural Gas Act for a limited term certificate with pregranted abandonment authority, authorizing it to operate, for a limited period commencing November 1, 1997 and ending November 1, 1998, two 350 horsepower Clark compressor units and related facilities, which are located at its Sheffield Compressor Station in Colbert County, Alabama, that are currently used for standby purposes, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

MIT requests that the Commission issue the requested limited term authorization no later than October 15, 1997 to provide the necessary firm service entitlements of its customers commencing November 1, 1997. MIT states that during June 1997, it conducted an open season for new firm service. MIT contends that in response it obtained new contracts for firm service totaling 25,342 Dth/d. In Docket No. RP97–331–000 the Commission required MIT to continue service to the Cities of Decatur and Huntsville, Alabama, for one year beyond their respective contract expiration dates.[1] MIT states that as a result, it is obligated by Commission order to provide firm service to Decatur until November 1, 1998, and to Huntsville until April 1, 1999. MIT asserts that with the required continuation of firm service to Decatur and Huntsville, it will require additional peak day capacity in order to provide the new firm service that its open season customers have contracted for commencing November 1, 1997.

MIT states that because the compressor facilities currently serve its system in a standby capacity, there are no additional construction costs associated with this proposal. MIT will provide the additional firm service that is contracted to commence on November 1, 1997, at its existing Part 284 tariff rates and pursuant to its existing Part 284 Blanket Certificate authority. MIT requests that the Commission grant it temporary authorization to operate the two compressor units no later than October 15, 1997, if permanent certificate authorization cannot be issued by such date.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 29, 1997, file with the Federal Energy Regulatory Commission, 888 First 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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

[1] 79 FERC ¶ 61,282 (1997).

unnecessary for MIT to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22479 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–449–000]**

### Midwestern Gas Transmission Company; Notice of Compliance Filing

August 19, 1997.

Take notice that on August 15, 1997, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 81.

Midwestern states that this filing is in compliance with Ordering Paragraph (B) of the Commission's February 27, 1997 Order on Remand in Docket Nos. RM91–11–006 and RM87–34–072. Order No. 636–C, 78 FERC ¶ 61,186 (1997). Midwestern further states that the revised tariff sheet establishes a new contract term cap of five years for its right-of-first-refusal tariff provisions consistent with the new cap established in Order No. 636–C. Midwestern requests an effective date of September 15, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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 available for public inspection in the public Reference Room.

**Lindwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22450 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–158–002]**

### Mississippi River Transmission Corporation; Notice Of Refund Report

August 19, 1997.

Take notice that on August 14, 1997, Mississippi River Transmission Corporation (MRT) submitted a refund report reflecting the distribution of refund amounts by MRT to its affected customers pursuant to Section 17.1 (b) of MRT's Tariff. The amounts being refunded are the flowthrough of excess revenues derived from providing service under Rate Schedule ITS and certain revenues derived from authorized overrun service (AOS) received during the twelve month period ended October 31, 1996, including interest through July 31, 1997.

MRT states that the refunds were paid on July 31, 1997. MRT states that the total refunds covered by the instant filing amount to $775,892.98, inclusive of principal and interest.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 26, 1997. 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22443 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–446–000]**

### Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 19, 1997.

Take notice that on August 15, 1997, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the pro forma Tariff sheets set forth on Appendix B to the filing in compliance with the Commission's Order Nos. 587, 587–B and 587–C to become effective October 1, 1997 and November 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 which revised the Commission's regulations governing interstate natural gas pipelines to follow standardized business practices issued by the Gas Industry Standards Board (GISB). On January 30, 1997, the Commission issued Order No. 587–B which it adopted some of the EDM standards for conducting business transactions over the Internet using an Internet server model. On March 4, 1997, the Commission issued Order No. 587–C which incorporated by reference 27 GISB business practices that revised and supplemented the standards adopted in Order No. 587 as well as one new communication standard. Nautilus states that the amended pro forma tariff sheets submitted herewith revise its tariff to comply with Order Nos. 587, 587–B and 587–C.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with 18 CFR Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22447 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–2570–000]**

### Northeast Energy Services, Inc.; Notice of Filing

August 19, 1997.

Take notice that on July 28, 1997, Northeast Energy Services, Inc., tendered for filing a letter requesting cancellation of Rate Schedule No. 1 in the above-referenced docket.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 96–22433 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP93–206–017 and RP96–347–008]**

### Northern Natural Gas Company; Notice of Compliance Filing

August 19, 1997.

Take notice that on August 15, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute Third Revised Sheet No. 201
3 Substitute original Sheet No. 263D
First Revised Sheet No. 302
Substitute First Revised Sheet No. 303

Northern states that the instant filing is made in compliance with the Commission's Order issued July 31, 1997 in Docket Nos. RP93–206–000 and RP96–347–000 et al., addressing the Carlton Settlement.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, 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 inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22441 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–447–000]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 19, 1997.

Take notice that on August 15, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on September 15, 1997:

Third Revised Sheet No. 106
First Revised Sheet No. 107

Northern states that the above-referenced tariff sheets amends Firm Throughput Services Rate Schedule TF to clarify the Shipper notification requirements associated with reduction rights.

Northern states that copies of the filing were served upon Northern's 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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, 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 inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22448 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–2585–000]**

### Public Service Company of New Mexico; Notice of Filing

August 19, 1997.

Take notice that on August 7, 1997, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to this 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 available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22434 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3553–000]**

### Rochester Gas and Electric Corporation; Notice of Filing

August 19, 1997.

Take notice that on July 25, 1997, Rochester Gas and Electric Corporation (RG&E) tendered for filing an amendment to its July 1, 1997, application for an order accepting tariff for power sales at market based rates. The amendment incorporates certain modifications to RG&E's filed Tariffs and provides additional information on the issue of load pockets.

A copy of this filing has been served on the New York State Public Service Commission.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to this 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 available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22435 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3556–000]**

### Roxdel; Notice of Filing

August 19, 1997.

Take notice that on July 25, 1997, ROXDEL tendered for filing an amendment to its July 1, 1997, application for an order accepting rate schedule for power sales at market-based rates. The amendment incorporates certain modifications to ROXDEL's filed Rate Schedule and provides additional information on the issue of load pockets.

A copy of this filing has been served on the New York State Public Service Commission.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22436 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–919–000]**

### Toledo Edison Company; Notice of Filing

August 19, 1997.

Take notice that on July 28, 1997, the Toledo Edison Company tendered for filing an amendment in the above-referenced docket.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22431 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–18–008]**

### Transwestern Pipeline Company; Notice of Compliance Filing

August 19, 1997.

Take notice that on August 14, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to be effective August 1, 1997:

Substitute Fourth Revised Sheet No. 49

Transwestern states that the instant filing is made in compliance with the Commission's Letter Order issued on July 30, 1997 in Docket No. RP97–18–007 (July 30 Order) and to comply with the Gas Industry Standards Board (GISB) standards reflected in Order No. 587–C.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22442 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3664–000]**

### Union Electric Company; Notice of Filing

August 19, 1997.

Take notice that on August 7, 1997, Union Electric Company tendered for filing an amendment in the above-referenced docket.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22438 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER97–3663–000]

### Union Electric Development Corporation; Notice of Filing

August 19, 1997.

Take notice that on August 7, 1997, Union Electric Development Corporation tendered for filing an amendment in the above-referenced docket.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22437 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97–410–001]

### Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 19, 1997.

Take notice that on August 15, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1997:

Substitute First Revised Sheet No. 202
Substitute Second Revised Sheet No. 232C
Original Sheet No. 232D
Substitute Second Revised Sheet No. 292
First Revised Sheet No. 292A

Williston Basin states that it is filing the above tariff sheets in compliance with the Commission's July 31, 1997, "Order Accepting Tariff Sheets Subject to Conditions" which ordered that Williston Basin refile certain tariff sheets to clarify that a prepayment on a bid for capacity will be returned to the Shipper if the bid is withdrawn prior to the end of the bidding period.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–22445 Filed 8–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2000–010 New York]

### Power Authority of the State of New York; Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Scoping Meetings on Project Relicensing

August 19, 1997.

Power Authority of the State of New York (NYPA) is the licensee for the St. Lawrence-FDR Power Project, which is located on the St. Lawrence River in St. Lawrence County, New York. The license for the project expires October 31, 2003.

On June 3, 1996, NYPA filed a Notice of Intent to seek a new license to continue to operate and maintain its St. Lawrence-FDR Project.

NYPA, the Federal Energy Regulatory Commission (Commission), the New York State Department of Environmental Conservation (DEC), resource agencies, local governments, non-governmental organizations (NGOs), and many interested members of the public have been conducting a Cooperative Consultation Process (CCP) to identify resource issues to be addressed during the relicensing of the project. The establishment of the CCP Team and the commencement of the Scoping Process for the relicensing were announced in a Notice of Memorandum of Understanding, Formation of Cooperative Consultation Process Team, and Initiation of Scoping Process Associated with Relicensing the St. Lawrence-FDR Power Project, issued May 2, 1996, and published in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813. Representatives of the Canadian government, the International Joint Commission, and Mohawk Nation communities have also attended some of the meetings. The Scoping Process will assist the FERC and the DEC in satisfying their requirements under the National Environmental Policy Act of 1969 (NEPA) and Section 401(a)(1) of the Clean Water Act.

**Notice of Intent To Prepare an Environmental Impact Statement**

The Commission and DEC staffs have determined that relicensing the existing project could constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the staffs intend to prepare an environmental impact statement (EIS) for the relicensing of the St. Lawrence-FDR Project in accordance with NEPA. The DEC is a cooperating agency and is responsible for the issuance of a water quality certificate under the Clean Water Act.

The EIS will consider both site specific and cumulative environmental impacts of the proposed project and reasonable alternatives, and will include an economic and engineering analysis.

A draft EIS will be issued and circulated for review by all interested stakeholders and the public. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in a final EIS.

As part of the relicensing process, the CCP Team has prepared a Scoping Document I (SDI), which provides information on the scoping process, relicensing schedule, background information, environmental issues, and the proposed project and alternatives. The issues contained in SDI are based on agency and public comments at the CCP and other meetings.

The purpose of this notice is to: (1) advise all interested individuals, organizations, and agencies as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; (2) advise all individuals, organizations, and agencies of their opportunity for comment; and (3) extend for 30 days the current 60-day comment period, which closes August 25, 1997, on SDI.

**Scoping Process**

The staffs' scoping objectives are to:

Identify significant environmental issues;
Determine the depth of analysis appropriate to each issue;
Identify the resource issues not requiring detailed analysis; and
Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the EIS.

**Scoping Meetings**

On June 24, 25, and 26, 1997, the Commission and DEC staffs conducted scoping meetings, which were published in the **Federal Register** dated May 23, 1997, Volume 62, No. 100, on page 28461. Due to requests for an additional scoping meeting and to allow additional time for individuals to respond to comments received during the June scoping meetings, the Commission and DEC staffs will conduct two scoping meetings and extend for 30 days the current 60-day comment period, which closes August 25, 1997, on SDI. All comments will now be due no later than September 25, 1997. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, SDI has been circulated to enable appropriate federal, state, and local resource agencies, Native American Tribes, NGOs, and other interested individuals, organizations, and agencies to participate effectively in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic of the proposed scope of a cumulative effects analysis, and a list of preliminary issues. Copies of SDI will also be made available at the meetings.

A scoping meeting will be held on Tuesday, September 9, 1997, from 9:00 a.m. to 5:00 p.m., at the Akwesasne Housing Authority, State Route 37 (behind the police station), Hogansburg, New York. The evening scoping meeting will be held on Tuesday, September 9, 1997, from 7:00 p.m. to 9:00 p.m. at the Akwesasne Housing Authority.

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meetings participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staffs in defining and clarifying the issues to be addressed in the EIS.

**Meeting Procedures**

The meetings will be recorded by a stenographer. The minutes will become a part of the record of the Commission proceeding on the St. Lawrence-FDR Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned individuals, organizations, and agencies are encouraged to offer verbal comments during the public meetings.

Speaking time will be determined before the meetings, based on the number of persons wishing to speak and the approximate amount of time available for the session.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record.

All written scoping comments must be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426, no later than September 25, 1997. All filings should contain an original and 5 copies. Failure to file an original and 5 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner.

All correspondence should clearly show the following caption on the first page: Scoping Comments, St. Lawrence-FDR Power Project, Project No. 2000–010, New York.

All those attending the meetings are urged to refrain from making any communications concerning the merits of the project to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

If you would like to participate in the meetings or need general information on the CCP Team and process, as well as the relicensing process, contact any one of the following three individuals:

Mr. Thomas R. Tatham, New York Power Authority, 212–468–6747, 212–468–6272 (fax), EMAIL: Ytathat@IP3GATE.USA.COM.
Mr. Keith Silliman, New York State Dept. of Environmental Conservation, 518–457–0986, 518–457–3978 (fax), EMAIL: Silliman@ALBANY.NET.
Ms. Patti Leppert-Slack, Federal Energy Regulatory Commission, 202–219–2767, 202–219–2732 (fax), EMAIL: Patricia.LeppertSlack, @FERC.FED.US.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 97–22440 Filed 8–22–97; 8:45 am]
BILLING CODE 6717–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 19, 1997.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before October 24, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 3060–0785.

*Title:* Changes to the Board of Directors of the National Exchange Carrier Association and Federal-State Joint Board on Universal Service, CC Docket Nos. 97–21 and 96–45.

*Form No.:* FCC Form 457, Universal Service Worksheet.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 20,000.

*Estimated Hour Per Response:* 4.31 hours per response (average).

*Frequency of Response:* On occasion; semi-annual; quarterly; and monthly reporting requirements.

*Estimated Total Annual Burden:* 86,250 hours.

*Needs and Uses:* The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, based on the recommendations of the Federal-State Joint Board on Universal Service, the Commission adopted a Report and Order in CC Docket No. 96–45 on May 8, 1997 to implement the Congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. In the Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket Nos. 97–21 and 96–45, the Commission further clarifies reporting requirements necessary to calculate contributions to universal service. Section 254(d) requires all telecommunications carriers that provide interstate telecommunications services to make equitable and nondiscriminatory contributions towards the preservation and advancement of universal service. Section 254(d) also permits the Commission to require providers of interstate telecommunications to contribute to universal service if it would serve the public interest. Pursuant to section 54.703 of the Commission's rules, all contributors must contribute to the support mechanisms based on their end-user telecommunications revenues. End-user telecommunications revenues are those revenues derived from end users for telecommunications or telecommunications services. End-user telecommunications revenues also include revenues from subscriber line charges. Support for programs for schools, libraries, and rural health care providers will be based on interstate, intrastate and international end-user telecommunications revenues. Support for programs for high cost areas and low-income consumers will be based on interstate and international end-user telecommunications revenues. In order to compute contributions, contributors must submit semi-annually information regarding their end-user telecommunications revenues. Section 54.711 of the Commission's rules requires contributing entities to submit a semi-annual Universal Service Worksheet, FCC Form 457 (the Worksheet) and quarterly contributions to universal service. See 47 C.F.R. 54.711. The Worksheet requires entities to submit information regarding their end-user telecommunications revenues. It will require entities to list their revenues by several categories and to specify what portion of their revenues are attributable to interstate services. The Worksheet will be used by the Administrator or Temporary Administrator to calculate total end-user telecommunications revenues. This information shall be used to calculate the quarterly contribution factors which shall be applied to individual end-user telecommunications revenues to calculate individual contributions. Universal service contribution factors shall be based on the ratio of projected costs of the support mechanisms for the funding year, including administrative expenses, to the revenue base, calculated from information contained in the Worksheets. The 1998 universal service funding year will begin January 1, 1998 and end December 31, 1998. The Administrator or Temporary Administrator will adjust the contribution factor every quarter based on projected demand for services, administrative costs, etc. The Report and Order set forth a partial listing of the types of interstate services for which contributions must be made. Carriers that provide interstate services, including, but not limited to: cellular telephone and paging services; mobile radio services; operator services; PCS; access to interexchange service; special access; WATS; toll-free services; 900 services; MTS; private line; telex; telegraph; video services; satellite services; and resale services must contribute to the universal service support mechanisms. See 47 CFR Section 54.703. The Administrator or Temporary Administrator will bill contributors and the contributor will then submit its quarterly payment to the Administrator or Temporary Administrator. Contributors that provide services to schools, libraries, and health care providers may be eligible to receive a credit against their contributions. A contributor seeking a credit must submit information to the Administrator or Temporary Administrator regarding the services provided at less than cost. See 47 C.F.R. 54.515. The Administrator or Temporary Administrator will send contributors a quarterly bill that will set out the quarterly contribution due. In addition, contributors will be allowed to submit their quarterly contribution with the information necessary to calculate any credits. The Commission exempts certain carriers from the contribution requirement. If based on the funding year's first quarter contribution percentage, a contributor's yearly contribution would be less than $100, it will not be required to submit a Worksheet and a contribution. The information will be used by the Commission and the Administrator or Temporary Administrator to calculate contributions to the universal service support mechanisms.

*OMB Approval No.:* 3060–0786.

*Title:* Petitions for LATA Association Changes by Independent Telephone Companies.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 20.

*Estimated Time Per Response:* 6 hours per response.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 120 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* In Petitions for LATA Association Changes by Independent Telephone Companies, *Memorandum Opinion and Order* (*Order*), CC Docket No. 96–158, the Commission pursuant to the provisions of the Communications Act of 1934, as amended requests that independent telephone companies (ITCs) and Bell Operating Companies provide certain information to the Commission regarding ITC requests for changes in local access and transport area (LATA) association and modification of LATA boundaries to permit the change in association. The Commission has provided voluntary guidelines to assist ITCs in filing petitions for changes in LATA association and connected modification of LATA boundaries. The guidelines ask that each LATA association change request include the

following information: (1) Type of request; (2) exchange information; (3) number of access lines or customers; (4) public interest statement; (5) a map showing exchanges and LATA boundaries involved; (6) a list of extended local calling service (ELCS) routes between the independent exchange and the LATA with which it is currently associated; and (7) a BOC supplement requesting a modification of the LATA boundary. A carrier will be deemed to have made a *prima facie* case supporting grant of the proposed change in association if the petition: (1) States that the association change is necessary because of planned upgrades to the ITC's network or service that will require routing traffic through a different BOC LATA; (2) involves a limited number of access lines; and (3) includes a statement from the affected BOC(s) requesting a LATA modification. The guidelines will assist the ITCs in filing LATA association petitions and the Commission in determining whether a change in LATA association should be granted. The requested information will be used by the Commission to determine whether the need for the proposed changes in LATA association outweighs the risk of potential anticompetitive effects, and thus whether requests for changes in LATA association and connected modifications of LATA boundaries should be granted.

*OMB Approval No.:* 3060–0784.

*Title:* USAC Board of Directors Nomination Process, CC Docket Nos. 97–21 and 96–45.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 17.

*Estimated Time Per Response:* 20 hours per response.

*Frequency of Response:* On occasion; biennially.

*Total Annual Burden:* 340 total annual hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* In Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket Nos. 97–21 and 96–45, the Commission appoints the National Exchange Carrier Association (NECA) the temporary administrator of the universal service support mechanisms, subject to its creating a separate subsidiary, the Universal Service Administrative Company (USAC), to administer the support programs. The Commission also directs NECA to create two unaffiliated corporations to administer portions of the schools and libraries and rural health care programs. USAC's Board of Directors shall consist of 17 individuals who represent a cross section of industry providers and support program beneficiaries: (1) Three directors shall represent incumbent local exchange carriers, with one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of $40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of $40 million or less; (2) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than $3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of $3 billion or less; (3) One director shall represent commercial mobile radio service (CMRS) providers; (4) One director shall represent competitive local exchange carriers; (5) One director shall represent cable operators; (6) One director shall represent information service providers; (7) Three directors shall represent schools that are eligible to receive universal service discounts; (8) One director shall represent libraries that are eligible to receive universal service discounts; (9) One director shall represent rural health care providers that are eligible to receive supported services; (10) One director shall represent low-income consumers; (11) One director shall represent state telecommunications regulators; and (12) One director shall represent state consumer advocates. The Commission instructs industry and non-industry groups to nominate a consensus candidate for each seat on the Board. Each of these industry and non-industry groups shall submit the name of its nominee for a seat on USAC's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission within 14 calendar days of the publication of the Report and Order's rules in the **Federal Register**. Only members of the industry or non-industry group that a Board member will represent may submit a nomination for that position. See 47 C.F.R. Sections 69.614, 69.617. Members of the USAC Board will be appointed for two-year terms. Board members may be re-appointed for subsequent terms pursuant to the initial nomination and appointment process described above. The information will be used by the Commission to select USAC's Board of Directors. The information requested is not otherwise available. Without such information the Commission could not appoint a representative body to USAC's Board of Directors and, therefore, could not fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

*OMB Approval No.:* 3060–0646.

*Title:* Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers (CC Docket 94–129).

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 500.

*Estimated Time Per Response:* 2 hours per response.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1000 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Needs and Uses:* Interexchange carriers are required to provide consumers with letters of agency (LOA) that are physically separate or severable from any inducements or promotional materials. The letter of agency must be written in clear and unambiguous language and printed in a font whose size and style are comparable to the inducement. On July 15, 1997, the Commission released a combined Further Notice of proposed Rulemaking and Memorandum Opinion and Order on Reconsideration which amends the Commission's rules and policies governing the unauthorized switching of subscribers' primary interexchange carriers (PICs). In the Order on Reconsideration the Commission amends its rules regarding changes in subscribers' long distance carriers in three respects. The Commission amended its rules to (1) require carriers using letters of agency to fully translate the LOA into the same language as associated promotional materials, oral descriptions and instructions; (2) incorporate the terms interLATA and intraLATA into 64.1150(e)(4); and, (3) clarify that carriers must confirm orders for long distance service by telemarketing using only one of the four verification options contained in Section 64.1100.

Federal Communications Commission
**William F. Caton,**
*Acting Secretary.*
[FR Doc. 97–22547 Filed 8–22–97; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 19, 1997.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 24, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0767.
*Title:*
*Type of Review:* Extension of a currently approved collection.
*Respondents:* Business or other for-profit; individuals or households.
*Number of Respondents:* 44,000.
*Estimated Time Per Response:* Ownership and Gross Revenues Information—.5 to 4 hours; Disclosure of Terms of Joint Bidding Agreements—.5 hours; Maintaining Ownership and Gross Revenues Information—4 hours per response and 5 year retention; Transfer Disclosure—.5 hours.
*Cost to Respondents:* $45,734,700.
*Total Annual Burden:* 764,500 hours.
*Needs and Uses:* The ownership, gross revenues and joint bidding agreement information portions of this collection will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be a licensee. Without such information, the Commission could not determine whether to issue the licenses to the applicants that provide telecommunications, multi-channel video programming distribution and other communications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to ensure the market integrity of future auctions. Likewise, the information collected in connection with § 1.2111(a) of the Commission's rules 47 CFR 1.2111(a) will be used to maintain the market integrity of future auctions and prevent unjust enrichment.

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*
[FR Doc. 97–22480 Filed 8–22–97; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 97–137; FCC 97–298]**

### Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan

**AGENCY:** Federal Communications Commission.
**ACTION:** Notice.

**SUMMARY:** The Memorandum Opinion and Order (Order) in CC Docket No. 97–137 concludes that Ameritech Michigan (Ameritech) has not satisfied the requirements of section 271 of the Communications Act of 1934, as amended (Act). The Commission therefore denies Ameritech's application for authorization to provide in-region, interLATA services in Michigan. The Order declines to grant Ameritech authority to provide in-region, interLATA services in Michigan.

**EFFECTIVE DATE:** August 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Melissa Waksman, Attorney, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted and released August 19, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–298.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

**Synopsis of Order**

1. On May 21, 1997, Ameritech Michigan (Ameritech) filed an application for authorization under section 271 of the Communications Act of 1934, as amended, to provide in-region, interLATA services in the State of Michigan. In this Order, the Commission finds that Ameritech has met its burden of demonstrating that it is providing access and interconnection to an unaffiliated, facilities-based provider of telephone exchange service to residential and business subscribers in Michigan, as required by section 271(c)(1)(A) of the statute. The Commission further concludes, however, that Ameritech has not yet demonstrated that it has fully implemented the competitive checklist in section 271(c)(2)(B). In particular, the Commission finds that Ameritech has not met its burden of showing that it meets the competitive checklist with respect to: (1) Access to its operations support systems; (2) interconnection; and (3) access to its 911 and E911 services. In addition, the Commission finds that Ameritech has not demonstrated that its "requested [in-region, interLATA authorization] will be carried out in accordance" with the structural and transactional requirements of sections 272(b)(3) and 272(b)(5), respectively. Accordingly, the Commission, pursuant to section 271(d)(3) of the Communications Act of

1934, as amended, (the Act), denies Ameritech's application to provide in-region, interLATA services in Michigan.

2. *Compliance with Section 271(c)(1)(A).* The Commission finds that Ameritech has entered into binding agreements with Brooks Fiber, MFS WorldCom, and TCG that have been approved under section 252 and that specify the terms and conditions under which Ameritech is providing access and interconnection to its network facilities for the network facilities of these three competing providers of telephone exchange service to residential and business subscribers. In addition, the Commission determines that Brooks Fiber is offering such telephone exchange service exclusively over its own telephone exchange service facilities. Thus, the Commission concludes that Ameritech has satisfied the requirements of section 271(c)(1)(A) through its interconnection agreement with Brooks Fiber. Because Ameritech has satisfied section 271(c)(1)(A) through its agreement with Brooks Fiber, the Commission does not reach the issue of whether Ameritech has also satisfied this provision through its agreements with MFS WorldCom and TCG.

3. *Compliance with the Competitive Checklist in section 272(B).* Because the Commission has concluded that Ameritech satisfies section 271(c)(1)(A), the Commission must next determine whether Ameritech has "fully implemented the competitive checklist in subsection (c)(2)(B)." For the reasons set forth below, the Commission concludes that Ameritech has not yet demonstrated by a preponderance of the evidence that it has fully implemented the competitive checklist.

4. As a preliminary matter, the Commission concludes that a BOC "provides" a checklist item if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter. The Commission emphasizes that the mere fact that a BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry pursuant to section 271(c)(1)(A) (i.e, "Track A"), to establish checklist compliance. To be "providing" a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item. Moreover, the petitioning BOC must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.

5. With respect to the first checklist item addressed, the Commission concludes, consistent with the findings of the Department of Justice and the Michigan Public Service Commission, that Ameritech has failed to demonstrate by a preponderance of the evidence that it provides nondiscriminatory access to all of the operations support systems (OSS) functions provided to competing carriers, as required by the competitive checklist. First, the Commission outlines its general approach to analyzing the adequacy of a BOC's operations support systems. Second, the Commission briefly describes the evidence in the record on this issue. Third, the Commission analyzes Ameritech's provision of access to OSS functions. The Commission emphasizes that Ameritech must demonstrate that it is providing nondiscriminatory access to OSS functions associated with unbundled network elements. The Commission then concludes that Ameritech has not demonstrated that the access to OSS functions that it provides to competing carriers for the ordering and provisioning of resale services is equivalent to the access it provides to itself. Because Ameritech fails to meet this fundamental obligation, the Commission need not decide, in the context of this application, whether Ameritech complies with its duty to provide nondiscriminatory access to each and every other remaining OSS function. Therefore, although the Commission does not address every OSS-related issue raised in the context of this application, the Commission makes clear that it has not affirmatively concluded that those OSS functions not addressed in this decision are in compliance with the requirements of section 271. Fourth, the Commission concludes that Ameritech has failed to provide the Commission with empirical data necessary for it to analyze whether Ameritech is providing nondiscriminatory access to all OSS functions, as required by the Act. Finally, in order to provide additional guidance, the Commission concludes by highlighting a number of other OSS-related issues that are of concern to the Commission.

6. The next checklist item the Commission addresses is interconnection. The Commission concludes, consistent with the Department of Justice's finding, that Ameritech has not established by a preponderance of the evidence that it is providing interconnection in accordance with the requirements of the Act. First, the Commission finds that the data Ameritech submitted provide the Commission with an inadequate basis to compare the quality of the interconnection that Ameritech provides to other carriers to that which Ameritech provides itself. For example, Ameritech's data contain insufficient information regarding the actual level of trunk blockage and no information about the rate of call completion. Next, the Commission concludes that even if it were to evaluate the quality of interconnection that Ameritech provides based solely on the data that Ameritech submitted, the difference between the blocking rates on trunks that interconnect competing LECs' networks with Ameritech's network and the blocking rates on Ameritech's retail trunks suggests that Ameritech's interconnection facilities do not meet the technical criteria and service standards that Ameritech uses within its own network, contrary to the requirements imposed by section 251(c)(2)(C).

7. The Commission also addresses the checklist item that requires Ameritech to provide nondiscriminatory access to 911 and E911 services, and concludes, in agreement with the Michigan Public Service Commission, that Ameritech has not met its burden of demonstrating that it satisfies this obligation. Specifically, the Commission finds that Ameritech maintains entries in its 911 database for its own customers with greater accuracy and reliability than it does the entries for the customers for competing local exchange carriers. In reaching this conclusion, the Commission finds it significant that there have been at least three instances involving customers of competing carriers, one as recently as May 21, 1997, where incorrect end user information was sent to emergency services personnel. Ameritech, which acknowledged fault in all three incidents, has presented no evidence to demonstrate that the 911 database error rate for competing local exchange carrier customer information is equivalent to the error rate for Ameritech's own customers. The Commission also concludes that Ameritech has not demonstrated that it provides facilities-based competitors that physically interconnect with Ameritech access to the 911 database in a manner that is at parity with the access it provides itself. In addition to these parity issues, the Commission expresses concerns regarding Ameritech's efforts to detect and remedy

errors in competitors' end user 911 data and in the proper functioning of competitors' trunking facilities.

8. *Compliance with Section 272.* In addition to making findings regarding Ameritech's compliance with section 271(c)(1)(A) and with the competitive checklist, the Commission addresses, pursuant to section 271(d)(3)(B), whether Ameritech has demonstrated that the requested authorization will be carried out in accordance with section 272. The Commission concludes that, based on its current and past behavior, Ameritech has failed to demonstrate that it will carry out the requested authorization in accordance with the requirements of section 272.

9. Specifically, the Commission concludes that Ameritech's corporate structure is not in compliance with the section 272(b)(3) requirement that its interLATA affiliate (ACI) maintain "separate" directors from the operating company (Ameritech Michigan). In particular, the Commission finds that under Delaware and Michigan corporate law, Ameritech Corporation has the duties, responsibilities, and liabilities of a director for both ACI and Ameritech Michigan. As a result, ACI lacks the independent management intended by the separate director requirement.

10. Additionally, the Commission concludes that Ameritech has failed to demonstrate that it will carry out the requested authorization in accordance with the section 272(b)(5) requirements that all transactions between Ameritech Michigan and ACI be conducted on an arm's length basis, be reduced to writing, and be available for public inspection. Specifically, the Commission finds that Ameritech has failed to disclose publicly the rates for all of the transactions between Ameritech and ACI. Moreover, it appears that Ameritech and ACI have not disclosed publicly all of their transactions as required by section 272(b)(5). Accordingly, if Ameritech continues its present behavior, and does not remedy these problems, it would not be in compliance with the requirements of section 272(b)(5).

11. *Public Interest.* Based on the Commission's conclusions that Ameritech has not implemented fully the competitive checklist and has not complied with the requirements of section 272, the Commission denies Ameritech's application for authorization to provide in-region, interLATA telecommunications services in Michigan. As a result, the Commission need not reach the further question of whether the requested authorization is consistent with the public interest, convenience and necessity, as required by section 271(d)(3)(C). The Commission believes, however, that, provided the competitive checklist, public interest, and other requirements of section 271 are satisfied, BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunication markets. In order to expedite such entry, the Commission believes it would be useful to identify certain issues for the benefit of future applicants and commenting parties, including the relevant state commission and the Department of Justice, relating to the meaning and scope of the public interest inquiry mandated by Congress. Accordingly, the Commission identifies the various factors it will consider and balance in undertaking a public interest analysis. The Commission notes that the presence or absence of any one factor will not dictate the outcome of its public interest inquiry. The Commission emphasizes, however, that it is not examining the public interest showing made in Ameritech's application, nor is the discussion intended to be an exhaustive analysis of the scope of the Commission's public interest inquiry generally.

12. *Other Matters.* In order to provide guidance to Ameritech, the Department of Justice, the Michigan Public Service Commission, and other interested parties, the Commission briefly addresses, but does not make any findings with respect to, certain other matters raised in the record. These matters include: the pricing requirements of the competitive checklist; Ameritech's compliance with remaining checklist requirements; Ameritech's inbound telemarketing script; Ameritech's intraLATA toll service; and access to customer proprietary network information.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–22548 Filed 8–22–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 1997.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. North Fork Bancorporation, Inc.*, Melville, New York; to acquire 100 percent of the voting shares of Branford Savings Bank, Branford, Connecticut.

**B. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Anderson Financial Group, Inc.*, Golden Valley, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Northern National Bank, Nisswa, Minnesota, a *de novo* bank.

*2. International Bancorporation*, Golden Valley, Minnesota; to acquire 100 percent of the voting shares of Northern National Bank, Nisswa, Minnesota, a *de novo* bank.

**C. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Citizens Bankers, Inc.*, Baytown, Texas, and Citizens Bankers of Delaware, Wilmington, Delaware; to acquire 100 percent of the voting shares of First National Bank of Bay City, Bay City, Texas.

Board of Governors of the Federal Reserve System, August 19, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–22428 Filed 8–22–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 7–21–97 AND 8–1–97

| Name of acquiring person, name of acquired person, name of acquired entity | PMN number | Date terminated |
|---|---|---|
| Wu-Fu Chen, Cisco Systems, Inc., Cisco Systems, Inc | 97–2647 | 07/22/97 |
| Cisco Systems, Inc., Ardent Communications Corporation, Ardent Communications Corporation | 97–2648 | 07/22/97 |
| Dycom Industries, Inc., Thomas Polis, Communications Construction Group, Inc | 97–2678 | 07/22/97 |
| Dycom Industries, Inc., George Tamasi, Communications Construction Group, Inc | 97–2679 | 07/22/97 |
| Ellis & Everard plc (a British company), Estate of Peter E. Macy, Mozel, Incorporated | 97–2728 | 07/22/97 |
| John C. Malone, Tele-Communications, Inc., Tele-Communications, Inc | 97–2764 | 07/22/97 |
| Lason, Inc., Horizon Capital Partners I Limited Partnership, Image Conversion Systems, Inc | 97–2795 | 07/22/97 |
| BAA plc (a British company), Duty Free International, Inc., Duty Free International, Inc | 97–2798 | 07/22/97 |
| Equus Equity Appreciation Fund, L.P., Lunn Industries, Inc., Newco | 97–2801 | 07/22/97 |
| Atlantic Express Transportation Group, Inc., Thomas and Marlene Deney (Husband and Wife), Central New York Coach Sales and Service, Inc | 97–2803 | 07/22/97 |
| James E. Lewis, Grand Metropolitan PLC (a British company, The Pillsbury Company | 97–2806 | 07/22/97 |
| NetManage, Inc., Network Software Associates, Inc., Network Software Associates, Inc | 97–2809 | 07/22/97 |
| Michael Krupp, Greif Bros. Corporation, Down River International, Inc | 97–2810 | 07/22/97 |
| Joseph P. Goryeb, Champion Mortgage Servicing Corp., Champion Mortgage Servicing Corp | 97–2812 | 07/22/97 |
| Republic Industries, Inc., Snappy Car Rental Inc., Snappy Car Rental Inc | 97–2816 | 07/22/97 |
| Douglas R. Knight, U.S. Office Products Company, U.S. Office Products Company | 97–2820 | 07/22/97 |
| Roger S. Penske, Outboard Marine Corporation, Outboard Marine Corporation | 97–2847 | 07/22/97 |
| FrontierVision Partners, L.P., Cablevision Systems Corporation, A–R Cable Services—ME, Inc | 97–2540 | 07/23/97 |
| Dassault Systems S.A., Solidworks Corporation, Solidworks Corporation | 97–2609 | 07/23/97 |
| Suiza Foods Corporation, Alan J. Bernon, Garelick Farms, Inc | 97–2690 | 07/23/97 |
| Suiza Foods Corporation, Peter M. Bernon, Garelick Farms, Inc | 97–2700 | 07/23/97 |
| Evergreen Media Corporation, Deseret Management Corporation, Bonneville International Corporation | 97–2789 | 07/23/97 |
| Ford Motor Company, Textron, Inc., Avco Financial Services of Hollywood, Florida, Inc | 97–2826 | 07/24/97 |
| The Chase Manhattan Corporation, Robert L. Fisher, Valley Industries, Inc | 97–2588 | 07/25/97 |
| BTR, plc, American Manufacturing Corporation, Limitorque Corporation | 97–2741 | 07/25/97 |
| Hugo E. Pimienta, PICO Holding, Inc., American Physicians Life Insurance Company | 97–2754 | 07/25/97 |
| Andrew G. Vajna, Cinergi Pictures Entertainment Cinergi Pictures Entertainment | 97–2830 | 07/25/97 |
| Central Louisiana Electric Company, Inc., Teche Electric Cooperative, Inc., Teche Electric Cooperative, Inc | 97–2831 | 07/25/97 |
| ICN Pharmaceuticals, Inc., Dr. h.c. Paul Sacher, F. Hoffmann-LaRoche Ltd., Syntex | 97–2684 | 07/28/97 |
| Dr. h.c. Paul Sacher, ICN Pharmaceuticals, Inc., ICN Pharmaceuticals, Inc | 97–2685 | 07/28/97 |
| Partners HealthCare Systems, Inc., AtlantiCare Corporation, AtlanticCare Medical Center, Inc | 97–2723 | 07/28/97 |
| FKI plc, Bridon plc, Bridon plc | 97–2756 | 07/28/97 |
| Gardena Holding AG, O'Sullivan Corporation, Melnor, Inc. and Melnor, Canada, Ltd | 97–2834 | 07/28/97 |
| The Edward W. Scripps Trust, Harte-Hanks Communications, Inc., Harte-Hanks Communications, Inc | 97–2837 | 07/28/97 |
| Windward Capital Associates, L.P., E.I. du Pont de Nemours and Company, Bio-Tech Resources, LP, Canadian Harvest, LP, DCV | 97–2839 | 07/28/97 |
| Windward Capital Associates, L.P., ConAgra, Inc., DCV Biologics LP, Ducoa L.P., Bio-Technological | 97–2840 | 07/28/97 |
| Metropolitan Life Insurance Company, ConAgra, Inc., DCV Inc., et al | 97–2841 | 07/28/97 |
| Metropolitan Life Insurance Company, E.I. du Pont de Nemours & Company, DCV, Inc., M-Cap Technologies, Int'l | 97–2842 | 07/28/97 |
| Rail Partners, L.P., James River Corporation of Virginia, Pennington Railroad, Inc | 97–2848 | 07/28/97 |
| Don Tyson, Dan J. Costa, Mallard's Food Products, Inc | 97–2851 | 07/28/97 |
| Bruce G. Robert QTIP Martial Trust, Hoya Corporation, Probe Technology Corporation | 97–2852 | 07/28/97 |
| Welsh, Carson, Anderson, & Stowe, VII, L.P., Control Data Systems, Inc., Control Data Systems, Inc | 97–2854 | 07/28/97 |
| Welsh, Carson, Anderson & Stowe, VII, L.P., Newco, Newco | 97–2855 | 07/28/97 |
| Hicks, Muse, Tate & Furst Equity Fund III, L.P., Ply Gem Industries, Inc., Ply Gem Industries, Inc | 97–2869 | 07/28/97 |
| Neff Corporation, George M. Bragg, Bragg Investment Company, Inc | 97–2872 | 07/28/97 |
| United States Surgical Corporation, Progressive Angioplasty Systems, Inc., Progressive Angioplasty Systems, Inc | 97–2873 | 07/28/97 |
| Frank Litvack, United States Surgical Corporation, United States Surgical Corporation | 97–2874 | 07/28/97 |
| Henry Schein, Inc., Ernest Sandler, IDE Interstate, Inc. | 97–2878 | 07/28/97 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 7–21–97 AND 8–1–97—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN number | Date terminated |
|---|---|---|
| Henry Schein, Inc., Marvin Sandler, IDE Interstate, Inc | 97–2879 | 07/28/97 |
| Schering-Plough Corporation, Acutek Adhesive Specialties, Inc., Acutek Adhesive Specialties, Inc | 97–2881 | 07/28/97 |
| William J. Kidd, Bruce Fleisher, Pilot Technologies Corp | 97–2884 | 07/28/97 |
| William J. Kidd, Hennessy Products Incorporated, Hennessy Products Incorporated | 97–2885 | 07/28/97 |
| Robert Hess, United States Surgical Corporation, United States Surgical Corporation | 97–2886 | 07/28/97 |
| Church & Dwight Co., Inc., Dial Corporation (The), Dial Corporation (The) | 97–2888 | 07/28/97 |
| Philip Services Corporation, Intermetco Limited, Intermetco Limited | 97–2891 | 07/28/97 |
| Electronic Manufacturing Systems, Inc., Michael and Suzanne Moshier, Talus Corporation | 97–2893 | 07/28/97 |
| Omnicom Group Inc., John D. Graham, Fleishman-Hillard, Inc | 97–2894 | 07/28/97 |
| Cornerstone Equity Investors IV, L.P., Interim Service Inc., Interim Healthcare Inc./Interim Healthcare of NY, Inc | 97–2895 | 07/28/97 |
| Physician Sales & Service, Inc., S&W X-Ray, Inc., S&W X-Ray, Inc | 97–2896 | 07/28/97 |
| VEBA AG, Wyle Electronics, Wyle Electronics | 97–2900 | 07/28/97 |
| Morgan Stanley Real Estate Fund II, L.P. (The), George P. Mitchell, The Woodlands Corporation | 97–2912 | 07/28/97 |
| Rodale Press, Inc., K–III Communications Corporation, K–III Magazine Corporation | 97–2917 | 07/28/97 |
| Republic Industries, Inc., Robert W. Navarre, II, Libertyville Enterprises, Inc | 97–2921 | 07/28/97 |
| Robert W. Navarre, II, Republic Enterprises, Inc., Republic Enterprises, Inc | 97–2922 | 07/28/97 |
| Jonathan O. Lee, Novartis AG, Novartis Consumer Health, Inc | 97–2928 | 07/28/97 |
| FrontierVision Partners, L.P., Gus Constantin and Mary Jane Constantin, PCI One, Incorporated | 97–2634 | 07/29/97 |
| Seagate Technology, Inc., Quinta Corporation, Quinta Corporation | 97–2711 | 07/29/97 |
| Gordon Crawford, CheckFree Corporation, Servantis Systems, Inc | 97–2720 | 07/29/97 |
| Conseco, Inc., Leucadia National Corporation, Colonial Penn Life Insurance Co., Providential Life | 97–2799 | 07/29/97 |
| American Home Products Corporation, Pharmacia & Upjohn, Inc., Pharmacia & Upjohn AB | 97–2805 | 07/29/97 |
| Sprint Corporation, Michael H. Holthouse, Paranet, Inc | 97–2914 | 07/29/97 |
| Eric A. Rothfeld, Miles Rubin, Sun Apparel, Inc., Import Technology of Texas, Inc | 97–2929 | 07/29/97 |
| Corporate Express, Inc., David R. McShane, McShane Enterprise, Inc | 97–2783 | 07/30/97 |
| Genicom Corporation, Digital Equipment Corporation, Digital Equipment Corporation | 97–2923 | 07/30/97 |
| Barclay McFadden, United Natural Foods, Inc., United Natural Foods, Inc | 97–2772 | 07/31/97 |
| Richard S. Youngman, United Natural Foods, Inc., United Natural Foods, Inc | 97–2773 | 07/31/97 |
| United Natural Foods, Inc., Barclay McFadden, Stow Mills, Inc | 97–2774 | 07/31/97 |
| United Natural Foods, Inc., Richard S. Youngman, Stow Mills, Inc | 97–2775 | 07/31/97 |
| Laidlaw Inc., CMS Mid-Atlantic Business Opportunity Partners, L.P., The DAVE Companies Inc | 97–2781 | 07/31/97 |
| Culp, Inc., S. Davis Phillips, Phillips Weaving Mills, Inc., Phillips Printing | 97–2782 | 07/31/97 |
| 21st Century Newspapers Acquisition, Inc., Walt Disney Company (The), Great Lakes Media, Inc | 97–2821 | 07/31/97 |
| Hawk Corporation, Robert G. Sierks, Sinterloy, Inc | 97–2825 | 07/31/97 |
| Harold Sargeant, Sr., Koch Industries, Inc., Koch Industries, Inc | 97–2295 | 08/01/97 |
| Marinya Holdings Pty. Ltd., The Walt Disney Company, Farm Progress Holding Company, Inc | 97–2829 | 08/01/97 |
| Spacelabs Medical, Inc., Burdick, Inc., Burdick, Inc | 97–2843 | 08/01/97 |
| David C. McCourt, WorldCom, Inc., WorldCom, Inc | 97–2864 | 08/01/97 |
| Gulf Polymer and Petrochemical, Inc., B.F. Goodrich Company, (The), B.F. Goodrich Company, (The) | 97–2908 | 08/01/97 |
| Whole Foods Market, Inc., Amrion, Inc., Amrion, Inc | 97–2916 | 08/01/97 |
| Joseph M. Field, Louis J. Appell Residuary Trust, KTHX License Investment Co. and KTHX Radio Inc | 97–2930 | 08/01/97 |
| Mr. John K. Castle, Vickers PLC, a U.K. Corporation, Jered Brown Brothers, Inc | 97–2933 | 08/01/97 |
| Authentic Specialty Foods, Inc., TSG2 L.P., La Victoria Foods, Inc | 97–2940 | 08/01/97 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 97–22490 Filed 8–22–97; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on December 4–7, 1997, at the Omni Shoreham Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Thursday, December 4, Friday, December 5, Saturday, December 6, and Sunday, December 7 from 8:30 am to 5:30 pm at the Omni Shoreham Hotel, 2500 Calvert St., NW, Washington, DC 20008. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to assess the Administration's response to previous recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's seven committees, Research, Services, Prevention, International, Discrimination, Communities for African and Latino Descent, and Prison Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 808 17th Street, N.W., Suite 820, Washington, D.C. 20006, Phone (202) 632–1090, Fax (202) 632–1096, will furnish the meeting agenda and roster of committee members upon

request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ann Borlo at (301) 986–4870 no later than November 1, 1997.

Dated: August 19, 1997.

**Daniel C. Montoya,**

*Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy.*

[FR Doc. 97–22533 Filed 8–22–97; 8:45 am]

BILLING CODE 3195–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

The Department of Health and Human Services has submitted the following (see below) emergency processing public information clearance request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35).

*Title:* State Annual Long-Term Care Ombudsman Report.

*OMB Number:* 0985–0005.

| Instrument | Number of respondents | Number of responses per year | Average burden hours per respondent | Total burden hours |
|---|---|---|---|---|
| State Annual Long-Term Care Ombudsman Report. | 52 State Agencies on Aging ..... | Once per respondent per year ..... | 173 | 9,000 |

*Description:* To revise an existing information collection for States to use in reporting on activities of their Long-Term Care Ombudsman Programs as required under Section 712(b) and (h) of the Older Americans Act, as amended; the revisions:

(1) Modify the wording of some of the complaint categories to assist respondents in categorizing some complaints which were being placed under "other;" and

(2) Stipulate that several narrative responses which have not changed since the previous report do not need to be repeated.

The reporting system is for fiscal year 1997–99.

*Additional Information:* The AoA is requesting that OMB grant a 180-day approval for this information collection under procedures for emergency processing by August 29, 1997. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Administration on Aging, Reports Clearance Officer, Sharon Matthews at (202) 205–2814.

Comments and questions about the ICR should be directed to the Office of Information and Regulatory Affairs, Attn: Allison Herron Eydt, OMB Desk Officer, Office of Management and Budget, Room 10325, Washington, DC 20503.

Dated: August 14, 1997.

**Alicia Valadez Ors,**

*Director, Office of Governmental Affairs and Elder Rights, Administration on Aging.*

[FR Doc. 97–22417 Filed 8–22–97; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 91F–0032]**

### Th. Goldschmidt A.G.; Withdrawal of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 1B4244) proposing that the food additive regulations be amended to provide for the safe use of silicone acrylate resins in coatings for metal substrates, polyolefin films, and paper and paperboard intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of March 4, 1991 (56 FR 9012), FDA announced that a food additive petition (FAP 1B4244) had been filed by Th. Goldschmidt A.G. (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations to provide for the safe use of silicone acrylate resins for use in coatings for metal substrates, polyolefin films, and paper and paperboard intended for use in contact with food. Th. Goldschmidt A.G. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 7, 1997.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 97–22554 Filed 8–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97D–0331]**

### Guidance for Industry on Dissolution Testing of Immediate Release Solid Oral Dosage Forms; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Dissolution Testing of Immediate Release Solid Oral Dosage Forms." The purpose of this guidance document is to provide general recommendations for dissolution testing, approaches for setting dissolution specifications related to biopharmaceutic characteristics of the drug substance, statistical methods for comparing dissolution profiles, and a process to help determine when dissolution testing is sufficient to grant a waiver for an in vivo bioequivalence study. This guidance document also provides recommendations for dissolution tests to help ensure continuous drug product quality and performance after certain postapproval manufacturing changes.

**DATES:** Written comments may be submitted at any time.

**ADDRESSES:** Submit written requests for single copies of "Dissolution Testing of Immediate Release Solid Oral Dosage Forms" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vinod P. Shah, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5635.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a guidance for industry entitled "Dissolution Testing of Immediate Release Solid Oral Dosage Forms." The purpose of this guidance document is to provide: (1) General recommendations for dissolution testing, (2) approaches for setting dissolution specifications related to biopharmaceutic characteristics of the drug substance, (3) statistical methods for comparing dissolution profiles, and (4) a process to help determine when dissolution testing is sufficient to grant a waiver for an in vivo bioequivalence study. Three categories of dissolution test specifications for immediate release drug products are described in the guidance: (1) Single-point specifications as routine quality control tests; (2) two-point specifications for characterizing the quality of the product and as a routine quality control test for certain types of drug products; and (3) dissolution profile comparison for accepting product sameness under scale-up and postapproval related changes (SUPAC), to waive bioequivalence requirements for lower strengths of a dosage form, and to support waivers of other bioequivalence requirements.

This document also provides recommendations for dissolution tests to help ensure continuous drug product quality and performance after certain postapproval manufacturing changes.

This guidance document represents the agency's current thinking on the dissolution testing of immediate release solid oral dosage forms. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance is also available on the Internet at http://www.fda.gov/cder/guidance.htm.

Dated: August 15, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–22422 Filed 8–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97D–3010]**

### Draft Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts (July 1997)." This draft guidance document is intended to provide information to manufacturers regarding the development of stability studies to determine the shelf life of standardized grass pollen extracts to help ensure the safety, purity, and potency of these products.

**DATES:** Written comments may be submitted at any time, however, to ensure comments are considered for the next revision they should be submitted by October 24, 1997.

**ADDRESSES:** Submit written requests for single copies of "Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts (July 1997)" to the Center for Biologics Evaluation and Research, Food and Drug Administration, Office of Communication, Training, and Manufacturers Assistance (HFM–40), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts (July 1997)." The draft guidance document provides a discussion of issues that should be considered in the development of stability protocols for allergenic extracts derived from grass pollen for diagnostic and immunotherapeutic uses.

The draft guidance document is intended to provide information to manufacturers regarding stability studies on grass pollen extracts. Such stability studies are used to empirically determine the shelf life of the product. This draft guidance document does not, however, change lot release criteria for these products. Issues addressed in the draft guidance document include but are not limited to: (1) Current lot release criteria, (2) lot release versus stability protocol, (3) modified stability protocol, (4) retesting, (5) dealing with test failure, and (6) extension of dating.

As with other guidance documents, FDA does not intend this draft guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements. The methods and procedures presented in the draft guidance document are suggestions. FDA anticipates that sponsors and investigators may develop alternative methods and procedures and discuss them with FDA. FDA may find those alternative methods and procedures acceptable. FDA recognizes that

advances will continue in the area of allergenic extracts and that this document may become outdated as those advances occur. This draft guidance document represents the agency's current thinking on testing limits in stability protocols for standardized grass pollen extracts. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday. Comments received will be considered in determining whether further revision of the draft guidance document is warranted.

Persons with access to the INTERNET may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: August 15, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–22421 Filed 8–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Notice of Listing of Members of the Food and Drug Administration's Senior Executive Service Performance Review Board

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the persons who will serve on the FDA Performance Review Board (PRB). This action is being taken in accordance with Title 5 U.S.C. 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Arlene S. Karr, Office of Human Resources and Management Services (HFA–408), Food and Drug Administration, 5600 Fishers Lane, rm. 7B–32, Rockville, MD 20857, 301–827–4183.

The following persons will serve on the FDA PRB, which oversees the evaluation of performance appraisals of FDA's Senior Executive Service (SES) members:

Michael A. Friedman, M.D., Chairperson
Robert J. Byrd
Margaret J. Porter
Sharon Smith Holston
Mary K. Pendergast
William B. Schultz

Dated: August 14, 1997.

**Michael A. Friedman,**

*Lead Deputy Commissioner for the Food and Drug Administration.*

[FR Doc. 97–22420 Filed 8–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA 1763, 2088 and R–142]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Termination of Premium Hospital and/or Supplementary Medical Insurance and Supporting Regulations in 42 CFR 406.28 and 407.27; *Form No.:* HCFA–1763 (OMB No. 0938–0025); *Use:* The HCFA–1763 is used by beneficiaries to request voluntary termination from premium hospital and/or supplementary medical insurance. *Frequency:* One time only; *Affected Public:* Individuals or Households and Federal Government; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24 *Form No.:* HCFA–2088 (OMB No. 0938–0037); *Use:* This form is used by Outpatient Rehabilitation Facilities to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 4,298; *Total Annual Responses:* 4,298; *Total Annual Hours:* 429,800.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and Supporting Regulations Contained in 42 CFR 488.18, 489.20 and 489.24; *Document No.: HCFA–R–142 (OMB#* 0938–0667); *Use:* The Information Collection Requirements contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor contains requirements for hospitals to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. HCFA will use this information to help assure compliance with this mandate and protect the public. This information is not contained elsewhere in regulations. *Frequency:* On occasion; *Affected Public:* Individuals or Households, Not-for-profit institutions, Federal

Government, and State, Local or Tribal Government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 1.

It should be noted for the HCFA–R–142, OMB 0938–0667, that based on industry input and HCFA analysis, the applicability and burden associated with the information collection requirements (ICR) captured in this submission have been adjusted to properly reflect the degree of burden associated with this collection. In particular, the ICRs captured in this submission have been determined to be either exempt or the burden has been deemed usual and customary in accordance with the 1995 PRA. In order to comply and properly reflect the Act, HCFA assigned a token one-hour of burden for this submission.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 18, 1997.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 97–22451 Filed 8–22–97; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

*Proposed Project: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)*—Extension and Revision—Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), Limitation on Prices of Drugs Purchased by Covered Entities. Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Office of Drug Pricing Program has developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

*Audit guidelines:* A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must notify the covered entity in writing when it believes the covered entity has violated the provisions of section 340B. If the problem cannot be resolved, the manufacturer must then submit an audit work plan describing the audit to the HRSA Office of Drug Pricing Program for review. The manufacturer will submit copies of the audit report to the HRSA Office of Drug Pricing Program for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General. As a result of public comment on the draft audit guidelines, one of the requirements has changed. The manufacturer is no longer required to submit a request for an audit of a covered entity to the HRSA Office of Drug Pricing Program. Instead, the manufacturer must notify the covered entity in writing when it believes the covered entity has violated the provisions of section 340B.

*Dispute resolution guidelines:* Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Office of Drug Pricing Program has developed a dispute resolution process which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA Office of Drug Pricing Program, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA Office of Drug Pricing Program. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, and no disputes have reached the level where a committee review was needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below.

| Reporting requirement | Number of respondents | Responses per respondent | Total responses | Hours/response | Total burden hours |
|---|---|---|---|---|---|
| Audits: | | | | | |
| Audit Notification of Entity [1] | 2 | 1.0 | 2 | 4.0 | 8 |
| Audit Workplan [1] | 1 | 1.0 | 1 | 8.0 | 8 |
| Audit Report [1] | 1 | 1.0 | 1 | 1.0 | 1 |
| Entity Response | 0 | 0.0 | 0 | 16.0 | 0 |

| Reporting requirement | Number of respondents | Responses per respondent | Total responses | Hours/response | Total burden hours |
|---|---|---|---|---|---|
| Dispute resolution: | | | | | |
| Mediation Request | 5 | 1.0 | 5 | 8 | 40 |
| Rebuttal | 2 | 1.0 | 2 | 16 | 32 |
| Total | 9 | 1.2 | 11 | 8.1 | 99 |

[1] Prepared by the manufacturers.

| Recordkeeping requirement | No. of recordkeepers | Hours of recordkeeping | Total burden |
|---|---|---|---|
| Dispute records | 10 | .5 | 5 |

The total burden is 94 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 19, 1997.

**Jane Harrison,**

*Acting Director, Divison of Policy Review and Coordination.*

[FR Doc. 97–22423 Filed 8–22–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1997:

*Name:* National Advisory Committee on Rural Health

*Dates and Time:* September 15—September 17, 1997

*Place:* Radisson Barcelo Hotel Washington, 2121 P Street, NW., Washington, DC 20037, Phone: (202) 293–3100, FAX: (202) 857–0134.

The meeting is open to the public.

*Agenda:* The plenary session on Monday morning September 15, will include a presentation and discussion of the Child Health Initiative and a presentation of the Balanced Budget Amendment, followed by a panel discussion on its implications for rural health. Also to be on the agenda is an update on rural AIDS issues. The latter part of the afternoon will be spent with the Work Groups discussing, in concurrent sessions, what the Balanced Budget Amendment means for rural health services, education, and health care financing. Strategies for addressing the issues will be explored on Tuesday in concurrent Work Group sessions. The final plenary session will be convened on Wednesday, September 17, at 8:30 a.m. During this session the Work Groups will report on their activities and information regarding the next agenda and future meeting dates and places will be discussed. The meeting will be adjourned at 12 Noon.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson or Lilly Smetana, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: August 20, 1997.

**Jane M. Harrison,**

*Committee Management Office, Health Resources and Services Administration.*

[FR Doc. 97–22552 Filed 8–22–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Human Genome Research Institute, September 11–12, 1997, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD.

This meeting will be open to the public on Thursday, September 11, 8:30 a.m. to approximately 3 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 11, from 3 p.m. to recess and on September 12, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Human Genome Research Institute, National Institutes of Health, Building 31, Room 4B09, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 594–0654, two weeks in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycles.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: August 19, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22545 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders on October 24, 1997 which will take place in Conference Room D, the Natcher Building, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting will be open to the public from 8:15 to 8:45 am to present reports and discuss issues related to the business of the Board. 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, United States Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8:45 am to adjournment. The closed portion of the meeting will be for the review, evaluation, and discussion of the research programs of tenure-track scientists within the Laboratory of Cellular Biology, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A meeting summary and roster of members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary, Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B–28, Rockville, Maryland 20850, 301–402–2829. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders.)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22460 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

*Name of SEP:* National Institute on Aging Special Emphasis Panel—N Apolipoprotein E in the Stressed Central Nervous System.

*Date of Meeting:* September 9, 1997.

*Time of Meeting:* 1:00 p.m. to adjournment.

*Place of Meeting:* Regal University Hotel, Durham, North Carolina.

*Purpose/Agenda:* To review a program project.

*Contact Person:* Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

*Name of SEP:* National Institute on Aging Special Emphasis Panel—Alzheimer's Disease Patient Registry (Telephone conference).

*Date of Meeting:* September 22, 1997.

*Time of Meeting:* 2:00 p.m. to adjournment.

*Place of Meeting:* Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

*Purpose/Agenda:* To review one grant application.

*Contact Person:* Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of SEP:* National Institute on Aging Special Emphasis Panel—Aging Auditory System: Presbycusis & Its Neural Bases.

*Date of Meeting:* October 8, 1997.

*Time of Meeting:* 8:30 to adjournment.

*Place of Meeting:* Gateway Building, 5th Floor Conference Room, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

*Purpose/Agenda:* To review one grant application.

*Contact Person:* Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of SEP:* National Institute on Aging Special Emphasis Panel Early Events in Alzheimer Pathogenesis.

*Date of Meeting:* November 13, 1997.

*Time of Meeting:* 1:00 p.m. to adjournment.

*Place of Meeting:* Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

*Purpose/Agenda:* To review a program project.

*Contact Person:* Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22462 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council of the National Institute of Mental Health (NIMH) for September 1997.

The meeting will be open to the public, as indicated, for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person in advance of the meeting.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, a portion of the Council meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting, a roster of committee members, or other information pertaining to the meeting may be obtained from the contact person.

*Name of Committee:* National Advisory Mental Health Council.

*Date:* September 18–19, 1997.

*Closed:* September 18—1:30 p.m. to recess.

*Place:* September 18—Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, MD 20857.

*Open:* September 19—8:30 a.m. to adjournment.

*Place:* September 19—National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Jane A. Steinberg, Ph.D., Parklawn Building, Room 18C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–5047.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282.)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22463 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism on September 18, 1997.

The meeting will be open to the public, as noted below, to discuss Institute programs and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ida Nestorio at 301–443–4376.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463 for the review, discussion and evaluation of individual research 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 and programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and the roster of committee members may be obtained from: Ms. Ida Nestorio, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: 301–443–4376. Other information pertaining to the meeting may be obtained from the contact person indicated.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.

*Executive Secretary:* James F. Vaughan, 6000 Executive Blvd., Suite 409, Bethesda, Md 20892–7003, 301–443–4375.

*Date of Meeting:* September 18, 1997.

*Place of Meeting:* Conference Room E1 & E2, Building 45 (Natcher), NIH Campus, 9000 Rockville Pike, Bethesda, Md 20892.

*Closed:* September 18, 1997—8:00 am to 11:00 am.

*Agenda:* To review and evaluate grant applications.

*Open:* September 18, 1997—11:00 am to 4:00 pm.

*Agenda:* Discussion of Institute extramural research programs, and other program and peer review issues relevant to Council activities.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273 Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health.)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22464 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on October 14–15, 1997, at the Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on October 14 to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on October 14, and from 8:30 a.m. until adjournment on October 15. 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. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Kevin M. Callahan, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22465 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* National Institute of Neurological Disorders and Stroke *Special Emphasis Panel.*

*Date:* October 9–10, 1997.

*Time:* October 9, 8:30 a.m. to recess, October 10, 8:30 a.m. to adjournment.

*Place:* Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Phone:* (202) 338–4600.

*Contact Person:* Dr. Lillian Pubols, Chief, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Md 20892, (301) 496–9223.

*Purpose/Agenda:* To review and evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences.)

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22466 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Fetal Neuroendocrinology, Paturition and the Myometrium.

*Date:* September 8–9, 1997.

*Time:* September 8—7:30 p.m.–10 p.m., September 9—8:30 a.m.–adjournment.

*Place:* Best Western University Inn, 1020 Ellis Hollow Road, Ithaca, New York 14850.

*Contact Person:* Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

*Purpose:* To evaluate and review a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 96.865, Research for Mothers and Children], National Institutes of Health.)

Dated: August 19, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 97–22543 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 16 and October 17, 1997, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 1 p.m. and from 2 p.m. to 5 p.m. on October 16 and from 9 a.m. to approximately 12 noon on October 17 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 496–4441 in advance of the meeting.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 16, from approximately 1 p.m. to 2 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Alexa McCray, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 18, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22461 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given on a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on October 23–24, 1997, convening at 9 a.m. on October 23 and at 8:30 a.m. on October 24 in the Board Room of the National Library of Medicine, Building 38,8600 Rockville Pike, Bethesda, Maryland.

The meeting on October 23 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5 U.S.C., Pub. L. 92–463, the meeting will be closed on October 23 from 10:23 a.m. to approximately 5 p.m. and on October 24 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: August 19, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–22544 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Division of Research Grants; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Clinical Sciences.

*Date:* September 4, 1997.

*Time:* 1 p.m.

*Place:* NIH, Rockledge 2, Room 4114, Telephone Conference.

*Contact Person:* Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

*Name of SEP:* Clinical Sciences.

*Date:* September 5, 1997.

*Time:* 8:30 a.m.

*Place:* Marriott Residence Inn, Bethesda, Maryland.

*Contact Person:* Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

*Name of SEP:* Multidisciplinary Sciences.

*Date:* November 3–4, 1997.

*Time:* 8:30 a.m.

*Place:* Holiday Inn, Chevy Chase, Maryland.

*Contact Person:* Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: August 19, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 97–22542 Filed 8–22–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–10]**

### Notice of Proposed Information Collection for Public Comments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: October 24, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Periodical Estimate for Partial Payment and Related Schedules.

*OMB Control Number:* 2577–0025.

*Description of the need for the information and proposed use:* Housing Agencies (HAs) are responsible for contract administration for project development. The contract/subcontractor reports details and summaries on payments, change orders, and schedule of material stored for the project. The information is used to make sure that the total development cost are kept at the lowest possible cost and consistent with HUD construction requirements.

*Members of affected public:* State, Local or Tribal Government Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,740 respondents; forms are submitted when requesting payments; 3.5 hours per response HUD–51001, 1 hour per response for HUD–51002, 1.5 hours per response for HUD–51003, 2.5 hours per response for HUD–51004; 20,155 hours total reporting burden.

*Status of the proposed information collection:* Extension.

**Authority:** Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 19, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Periodic Estimate for Partial Payment

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0025 (exp. 9/30/97)

Submit original and one copy to the Public Housing Agency.
Complete instructions are on the back of this form.

Public reporting burden for this collection of information is estimated to average 3.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponser, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project The information will be used to ensure that the total development costs, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

| Name of Public Housing Agency | Periodic Estimate Number | Period |
|---|---|---|
| | | ,19 to ,19 |

| Location of Project | Project Number |
|---|---|
| | |

| Name of Contractor | Contract Number |
|---|---|
| | |

| Item Number (1) | Description of Item (2) | Completed to Date (3) |
|---|---|---|
| | | $ |
| Value of Contract Work Completed to Date (Transfer this total to line 5 on back of this sheet) | | $ |

Previous editions are obsolete ref. Handbooks 7417.1 & 7450.1 form HUD-51001 (3/92)

## Instructions

**Headings.** Enter all identifying data required. Periodic estimates must be numbered in sequence beginning with the number 1.

**Columns 1 and 2.** The"Item Number"and "Description of Item" must correspond to the number and descriptive title assigned to each principal division of work in the "Schedule of Amounts for Contract Payments", form HUD-51000.

**Column 3.** Enter the accumulated value of each principal division of work completed as of the closing date of the periodic estimate. Enter the total in the space provided.

**Certifications.** The certification of the contractor includes the analysis of amounts used to determine the net balance due. In the first paragraph, enter the name of the Public Housing Agency, the contractor, and the date of the contract. Enter the calculations used in arriving at the "Balance Due This Payment" on lines 1 through 16.

Enter the contractor's name and signature in the certification following line 16.

The latter portion of this certification relating to payment of legal rates of wages, is required by the contract before any payment may be made. However, if the contractor does not choose to certify on behalf of his/her subcontractors to wage payments made by them, he/she may modify the language to cover only himself / herself and attach a list of all subcontractors who employed labor on the site during the period covered by the Periodic Estimate, together with the individual certifications of each.

## Certification of the Contractor or Duly Authorized Representative

According to the best of my knowledge and belief, I certify that all items and amounts shown on the other side of this form are correct; that all work has been performed and material supplied in full accordance with the items and conditions of the contract between the (name of owner) _____ and (contractor) _____ dated _____, 19_____, and duly authorized deviations, substitutions, alterations, and additions; that the following is a true and correct statement of the Contract Account up to and including the last day of the period covered by this estimate, and that no part of the "Balance Due This Payment" has been received.

1. Original Contract Amount . . . . . $_____

**Approved Change Orders:**

2. Additions (Total from Col. 3, form HUD-51002) $_____

3. Deductions (Total from Col. 5, form HUD-51002) $_____ (net) $_____

4. Current Adjusted Contract Amount (line 1 plus or minus net) ..... $_____

**Computation of Balance Due this Payment**

5. Value of Original Contract work completed to date (from other side of this form) . . . . $_____

**Completed Under Approved Change Orders**

6. Additions (from Col. 4, form HUD-51002) $_____ $_____

7. Deductions (from Col.5, form HUD-51002) $_____ (net) $_____

8. Total Value of Work in Place (line 5 plus or minus net line 7) . . . . . $_____

9. **Less:** Retainage, _____ % . . . . . $_____

10. Net amount earned to date (line 8 less line 9) . . . . . $_____

11. **Less:** Previously earned (line 10, last Periodic Estimate) . . . . . $_____

12. Net amount due, work in place (line 10 less line 11) . . . . . $_____

**Value of Materials Properly Stored**

13. At close of this period (from form HUD-51004) $_____

14. **Less:** Allowed last period $_____

15. Increase (decrease) from amount allowed last period . . . . . $_____

16. **Balance Due This Payment** . . . . . $_____

I further certify that all just and lawful bills against the undersigned and his/her subcontractors for labor, material, and equipment employed in the performance of this contract have been paid in full in accordance with the terms and conditions of this contract, and that the undersigned and his/her subcontractors have complied with, or that there is an honest dispute with respect to, the labor provisions of this contract.

| Name of Contractor | Signature of Authorized Representative | Title | Date |
|---|---|---|---|
| | | | |

**Certificate of Authorized Project Representative and of Contracting Officer**

Each of us certifies that he/she has checked and verified this Periodic Estimate No. _____; that to the best of his/her knowledge and belief it is a true statement of the value of work performed and material supplied by the contractor; that all work and material included in this estimate has been inspected by him/her or by his/her authorized assistants; and that such work has been performed or supplied in full accordance with the drawings and specifications, the terms and conditions of the contract, and duly authorized deviations, substitutions, alterations, and additions, all of which have been duly approved.

We, therefore, approve as the "Balance Due this Payment" the amount of $_____.

| Authorized Project Representative: | Date: | Contracting Officer: | Date: |
|---|---|---|---|
| | | | |

**Warning: HUD will prosecute** false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Previous editions are obsolete ref. Handbooks 7417.1 & 7450.1 form **HUD-51001** (3/92)

# Schedule of Change Orders

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0025 (exp. 9/30/97)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project The information will be used to ensure that the total development costs, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

**Instructions:** Contractors use this form for reporting the details of approved Change Orders. Attach an original (or a opy) to each copy of the Periodic Estimate for Partial Payment (form HUD-51001) submission, and send to the Public Housing Agency. Complete all entries. Only Change Orders which bear the signatures required by the contract are to be recorded.

| Name of Public Housing Agency | Supporting Periodic Estimate for Partial Payment Number | Period |
|---|---|---|
| | | ,19 to ,19 |

| Location of Project | Project Number |
|---|---|
| | |

| Name of Contractor | Contract Number |
|---|---|
| | |

| Approved Change Orders | | Additions | | Deductions |
|---|---|---|---|---|
| Change Order Number (1) | Dated (2) | Total Amount of Change Order (3) | Value of Work Completed to Date (4) | Total Amount of Change Order (5) |
| | | $ | $ | $ |
| Totals | | $ | $ | $ |

**Authorized Project Representative:** **Date:**

**Warning: HUD will prosecute** false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Previous editions are obsolete.

form **HUD-51002** (3/92)
ref. Handbooks 7417.1 & 7450.1

# Schedule of Materials Stored

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0025 (exp. 9/30/97)

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project The information will be used to ensure that the total development costs, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

**Instructions:** This form is to be used to support the Periodic Estimate for Partial Payment (form HUD-51001). The contractor must prepare a separate schedule for his/her materials and for those of his/her subcontractors. Attach an original (or a copy ) to each copy of the Summary of Materials Stored (form HUD-51004). Enter all identifying data and list materials stored. The listing of materials stored must correspond to the arrangement established on the Schedule of Contract Payments (form HUD-51000) and each item will be keyed by corresponding item number. This form must be signed as noted.

| Name of Public Housing Agency | Supporting Periodic Estimate for Partial Payment Number | Period |
|---|---|---|
| | | ,19 to ,19 |

| Name and Location of Project | Project Number |
|---|---|
| | |
| Name of General Contractor | Contract Number |
| | |
| Name of Subcontractor | Subcontract Number |
| | |

| Item Number* | Description and Quality | Quantity | Unit of Measure | Unit Price at Site | Total Price |
|---|---|---|---|---|---|
| Amount Carried Forward | | | | | $ |
| | | | | | |
| Total Amount or Amount Carried Forward | | | | | $ |

| Prepared by (Contractor's Representative) : | Date | Checked by (Owner's Representative) : | Date |
|---|---|---|---|
| | | | |

**Warning: HUD will prosecute** false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

* As identified in Schedule of Amounts for Contract Payments, form HUD-51000.
Previous editions are obsolete

form **HUD-51003** (3/92)
ref. Handbooks 7417.1 & 7450.1

# Summary of Materials Stored

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0025 (exp. 9/30/97)

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project The information will be used to ensure that the total development costs, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

**Instructions:** This form is for the Contractor to summarize the value of materials stored at the site (as shown on the schedule, form HUD-51003). Use a separate line for the contractor and each of his/her subcontractors. Prepare an original and one copy, attach form HUD-51003, and send to the Public Housing Agency with the Periodic Estimate for Partial Payment, form HUD-51001. **Payment Value.** No more than 90 percent of the estimated value of the stored materials will be allowed, and only the net amount will be carried to line 13 on the back of the Periodic Estimate for Partial Payment, form HUD-51001. **Signatures.** This form must be signed by those employees of the contractor and of the Public Housing Agency who prepare and check the Schedule of Materials Stored, form HUD-51003.

| Name of Public Housing Agency: | Supporting Periodic Estimate for Partial Payment Number: | Period : ,19 to ,19 |
|---|---|---|
| | | |

| Location of Project: | Project Number: |
|---|---|
| | |

| Name of General Contractor: | Contract Number: |
|---|---|
| | |

| Name of General Contractor or Subcontractor | Amounts |
|---|---|
| General Contractor | $ |
| Subcontractors: | $ |
| Total | $ |
| Less 10% $ | |
| Net | $ |

| Prepared by | Date | Checked by | Date |
|---|---|---|---|
| | | | |

I certify that I or my authorized representatives have examined and checked in detail the invoices representing the cost of materials set forth in appended "Schedule of Materials Stored", form HUD-51003, dated , 19 , submitted by consisting of sheets with an indicated cost of $ , and find that the net unit prices set forth in the schedule are the same or less than the invoices examined, and that such materials were suitably stored at the site of the development as of , 19 .

| Name of Owner | By (Authorized Representative) | Title | Date |
|---|---|---|---|
| | | | |

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Previous editions are obsolete

form **HUD-51004** (3/92)
ref. Handbooks 7417.1 & 7450.1

[FR Doc. 97–22459 Filed 8–22–97; 8:45 am]
BILLING CODE 4210–33–C

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Liquor Ordinance of the Susanville Indian Rancheria

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. SU-BC–19–97, approving Ordinance No. 97–3, the Liquor Ordinance of the Susanville Indian Rancheria, was duly adopted and certified by the General Council of the Susanville Indian Rancheria on May 5, 1997. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Susanville Indian Rancheria, under the jurisdiction of the Susanville Indian Rancheria, and is in conformity with the laws of the State of California.

**DATES:** This Ordinance is effective August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603-MIB, Washington, DC 20240-4001; telephone (202) 208–3463.

**SUPPLEMENTARY INFORMATION:** The Liquor Ordinance of the Susanville Indian Rancheria is to read as follows:

### Liquor Ordinance of the Susanville Indian Rancheria

*Introduction*

101. *Title.* This Ordinance shall be known as the "Liquor Ordinance of the Susanville Indian Rancheria."

102. *Authority.* This Liquor Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, and 67 Stat. 586, 18 U.S.C. 1161) and the Constitution of the Susanville Indian Rancheria adopted on October 10, 1996, and applicable laws.

103. *Purpose.* The purpose of this Liquor Ordinance is to regulate and to control the possession and sale of liquor to and on the Susanville Indian Rancheria. The enactment of a tribal ordinance governing liquor possession and sale on the Reservation will increase the ability of the tribal government to control Reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

104. *Tribal Jurisdiction.* This ordinance applies to all lands in which the Susanville Indian Rancheria holds an ownership interest and which are defined as Indian country under 18 U.S.C. 1151. At the time of enacting this ordinance, the Rancheria does not have an ownership interest in any lands defined by 18 U.S.C. 1154(c) as fee-patented land in a non-Indian community or rights-of-ways which run through the Rancheria's lands. This ordinance is in conformity with California State alcohol laws as required by 18 U.S.C. 1161.

*Definitions*

201. As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

202. *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

203. *Alcoholic Beverage* is synonymous with the term "Liquor" as defined in section 208 of this chapter.

204. *Bar* means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of any liquor or alcoholic beverage, as herein defined.

205. *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or concoction of pure hops, or pure extract of hops and pure barley malt, or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "Strong Beer."

206. *The Tribal Business Council* as used herein means the body authorized by the Susanville Indian Rancheria constitution to promulgate all tribal ordinances and regulations.

207. *General Council* means the general council of the Susanville Indian Rancheria which is composed of the voting membership of the Tribe as a whole.

208. *Liquor* includes the four varieties of liquor herein defined (Alcohol, Spirits, Wine, and Beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

209. *Liquor Store* means any store at which liquor is sold and, for the purposes of this Liquor Ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

210. *Malt Liquor* means Beer, Strong Beer, ale, stout, and porter.

211. *Package* means any container or receptacle used for holding liquor.

212. *Public Place* includes state or county or Tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment; public buildings; public meeting halls; lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Liquor Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

213. *Reservation* means land held in trust by the United States Government for the benefit of the Susanville Indian Rancheria (see also Tribal Land).

214. *Sale* and *Sell* include exchange, barter, and traffic and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

215. *Spirits* means any beverage which contains alcohol obtained by distillation including wines exceeding seventeen percent of alcohol by weight.

216. *Tribe* means the Susanville Indian Rancheria.

217. *Tribal Land* means any land within the exterior boundaries of the Reservation which is held in trust by the United States for the Tribe as a whole including any such land leased to other parties.

218. *Trust Account* means the account designated by the Tribal Business Council for deposit of proceeds from

any tax or fee levied by the Tribal Business Council and relating to the sale of alcoholic beverages.

219. *Trust Agent* means the Tribal Chairperson or his or her designee.

220. *Wine* means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

*Powers of Enforcement*

301. *Powers.* The Tribal Business Council, in furtherance of this Liquor Ordinance, shall have the following powers and duties:

a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of Alcoholic Beverages on the Reservation;

b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Business Council to perform its functions; all such employees shall be Tribal employees;

c. To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;

d. To hold hearings on violations of this Liquor Ordinance or for the issuance or revocation of licenses hereunder pursuant to sections 501 through 506 ;

e. To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;

f. To determine and seek damages for violation of this Liquor Ordinance;

g. To make such reports as may be required by the General Council;

h. To collect taxes and fees levied or set by the Tribal Business Council, and to keep accurate records, books and accounts; and

i. To exercise such other powers as are delegated by the General Council.

302. *Limitation on Powers.* In the exercise of its powers and duties under this Liquor Ordinance, the Tribal Business Council and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

303. *Inspection Rights.* The premises on which Liquor is sold or distributed shall be open for inspection by the Tribal Business Council or its designee at all reasonable times, which includes the hours the business is open to the public, for the purposes of ascertaining whether the rules and regulations of this Liquor Ordinance are being followed.

**Sales of Liquor**

401. *Tribal Liquor License Required; Tribally Owned Businesses.* No sales of Alcoholic Beverages shall be made within the exterior boundaries of the Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the Reservation. Nothing in this section shall prohibit a tribal licensee or the Tribe from purchasing liquor from an off-reservation source for resale on the Reservation or the delivery to the Tribe for a tribal licensee of liquor purchased from off-reservation sources for resale on the Reservation.

402. *Sale only on Tribal Land.* All Liquor sales within the exterior boundaries of the Reservation shall be on Tribal Land, including leases thereon.

403. *Sales for Cash.* All Liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or major credit cards such as MasterCard, Visa, American Express, etc.

404. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any Alcoholic Beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance who purchases an Alcoholic Beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this Liquor Ordinance and shall be subject to paying damages to the Tribe as set forth herein.

**Licensing**

501. *Applicable for Tribal Liquor License Requirements.* No Tribal license shall be issued under this Liquor Ordinance except upon a sworn application filed with the Tribal Business Council containing a full and complete showing of the following:

a. Satisfactory proof that the applicant is or will be duly licensed by the State of California to sell Alcoholic Beverages;

b. Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible;

c. The description of the premises in which the Alcoholic Beverages are to be sold and proof that the applicant is the owner of such premises or the lessee of such premises for at least the term of the license;

d. Agreement by the applicant to accept and abide by all conditions of the Tribal license.

e. Payment of a fee established from time to time by the Tribal Business Council. Said fee is established initially at $250.00 but can be changed by Tribal Business Council resolution at any time;

f. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, if an entity, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State of California;

g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where Alcoholic Beverages are to be sold for at least 30 days prior to consideration by the Tribal Business Council and has been published at least twice in such local newspaper serving the community that may be affected by the license as the Tribal Business Council may authorize. The notice shall state the date, time, and place when the application shall be considered by the Tribal Business Council pursuant to section 502 of this ordinance.

502. *Hearing on Application for Tribal Liquor License.* All applications for a Tribal liquor license shall be considered by the Tribal Business Council in open session at which the applicant, his, her or its attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Business Council, by secret ballot, shall determine whether to grant or deny the application based on: (1) Whether the requirements of section 501 have been met; and (2) whether the Tribal Business Council, in its discretion, determines that granting the license is in the best interest of the Tribe. In the event that the applicant is a member of the Tribal Business Council, or the applicant is a member of the immediate family of a Tribal Business Council member, such Tribal Business Council member shall not vote on the application or participate in the hearings as a Tribal Business Council member.

503. *Temporary Permits.* The Tribal Business Council or its designee may grant a temporary permit for the sale of Liquor for a period not to exceed three (3) days to any person applying to the same in connection with a Tribal or community activity, provided that the

conditions prescribed in section 504 of this Liquor Ordinance shall be observed by the permittee. Each permit issued shall specify the types of Alcoholic Beverages to be sold. Further, a fee of $50.00 will be assessed on temporary permits.

504. *Conditions of a Tribal Liquor License.* Any Tribal liquor license issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Tribal Business Council shall fix including but not limited to the following:

a. The license shall be for a term not to exceed one (1) year.

b. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

c. The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under federal, California, or Tribal law.

d. The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

e. Subject to the provisions of subsection "g" of this section, no Liquor or Alcoholic Beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Tribal Business Council, provided that the licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of California.

f. No liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Tribal Business Council.

g. All acts and transactions under authority of the Tribal liquor license shall be in conformity with the laws of the State of California, with this Liquor Ordinance, and with any Tribal liquor license issued pursuant to this Liquor Ordinance.

h. No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages in the licensed establishment or area.

i. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

505. *License Not a Property Right.* Notwithstanding any other provision of this Liquor Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal liquor license give rise to a presumption of legal entitlement to a license/permit in a subsequent time period.

506. *Assignment or Transfer.* No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Tribal Business Council expressed by formal resolution.

*Rules, Regulations, and Enforcement*

601. *Sale or Possession With Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any Liquor in violation of this Liquor Ordinance, or who shall operate or shall have Liquor in his possession with intent to sell or distribute without a license or permit, shall be guilty of a violation of this Liquor Ordinance.

602. *Purchases From Other Than Licensed or Allowed Facilities.* Any person who, within the boundaries of the Reservation, buys Liquor from any person other than at a properly licensed or allowed facility shall be guilty of a violation of this Liquor Ordinance.

603. *Sales to Persons Under the Influence of Liquor.* Any person who sells Liquor to a person apparently under the influence of Liquor shall be guilty of a violation of this Liquor Ordinance.

604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any Liquor in any public conveyances shall be guilty of an offense. Any person who shall drink any Liquor in a public conveyance shall be guilty of a violation of this Liquor Ordinance.

605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any Alcoholic Beverage. No person shall permit any other person under the age of 21 years to consume Liquor on his premises or any premises under his control except in those situations set out in this Section. Any person violating this Section shall be guilty of a separate violation of this Liquor Ordinance for each and every drink so consumed.

606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide Liquor to any person under the age of 21 years shall be guilty of a violation of this Liquor Ordinance for each sale or drink provided.

607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain Liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

608. *Use of False or Altered Identification.* Any person who attempts to purchase an Alcoholic Beverage through the use of a false or altered identification shall be guilty of violating this Liquor Ordinance.

609. *Acceptable Identification.* Where there may be a question of a person's right to purchase Liquor by reason of his or her age, such person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any state or identification card issued by any state department of motor vehicles; (2) United States active duty military; or (3) a passport.

610. *Violations of this Liquor Ordinance.* Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe a civil fine not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or canceled by the Tribal Business Council for the violation of any of the provisions of this Liquor Ordinance, or of the Tribal license or permit, upon hearing before the Tribal Business Council after 10 days notice to the licensee. The decision of the Tribal Business Council shall be final and no appeal therefrom allowed. The Tribal Business Council shall grant all persons in any hearing regarding violations, penalties, or license suspensions under this Ordinance all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. 1302, *et seq.* Notice of a Tribal Business Council hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entity(ies) at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with The Tribal Business Council retaining proof of service. The notice will set out the right of the alleged violator to be represented by counsel retained by the alleged violator, the right to speak and to present witnesses and to cross-examine any witnesses against them.

611. *Possession of Liquor Contrary to This Liquor Ordinance.* Alcoholic Beverages which are possessed contrary to the terms of this Liquor Ordinance are declared to be contraband. Any Tribal agent, employee, or officer who is authorized by the Tribal Business Council to enforce this Section shall have the authority to, and shall, seize all contraband.

612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of this Liquor Ordinance by the Tribal Business Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

*Taxes*

701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of Alcoholic Beverages on the Reservation in the amount of one percent (1%) of the amount actually collected. The tax imposed by this section shall apply to all retail sales of Liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of California.

702. *Payment of Taxes to Tribe.* All taxes from the sale of Alcoholic Beverages on the Reservation shall be paid over to the Trust Agent of the Tribe.

703. *Taxes Due.* All taxes from the sale of Alcoholic Beverages on the Reservation are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of Alcoholic Beverages as well as for the taxes collected.

705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of Alcoholic Beverages on the Reservation. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Tribal Business Council, such a review or audit is necessary to verify the accuracy of reports.

*Profits*

801. *Disposition of Proceeds.* The gross proceeds collected by the Tribal Business Council from all licensing provided under this Liquor Ordinance, or the imposition of civil penalties for violating this Ordinance, or from the taxation of the sales of Alcoholic Beverages on the Reservation, shall be distributed as follows:

a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

b. The remainder shall be turned over to the Trust Account of the Tribe.

*Severability and Miscellaneous*

901. *Severability.* If any provision or application of this Liquor Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

902. *Prior Enactments.* Any and all prior ordinances, resolutions or enactments of the Tribal Business Council which are inconsistent with the provisions of this Liquor Ordinance are hereby rescinded.

903. *Conformance with Tribal, State and Federal Law.* This Ordinance conforms with all Rancheria tribal law and governing documents such as the Constitution and By-Laws. All provisions and transactions under this Ordinance shall be in conformity with California State law regarding alcohol to the extent required by 19 U.S.C. 1161 and with all federal laws regarding alcohol in Indian country.

904. *Enforcement.* All actions brought by the Tribal Business Council to enforce the provisions of this Ordinance shall be filed in the Tribal Court of the Susanville Indian Rancheria. In the absence of a tribal court, said actions shall be filed in Federal court in the Eastern District of California and be appealable in the federal court system. If the federal court should determine that it lacks jurisdiction over said action, it shall be filed in the California state court in Lassen County with the subject matter jurisdiction and venue over the action. The first court system to have jurisdiction over an enforcement action, analyzing first, tribal court; second, Federal court; and third, state courts shall have exclusive jurisdiction over such actions.

905. *Effective Date.* This Liquor Ordinance shall be effective after the Secretary of the Interior certifies the Ordinance and publishes it in the **Federal Register**.

*Amendment*

1001. *Amendment or Repeal.* This Ordinance may be amended or repealed by a majority vote of the Tribal Business Council or by the General Council at a properly held meeting. Amendments of this Ordinance need not be published in the **Federal Register** to become effective.

*Sovereign Immunity.*

1101. Nothing contained in this Liquor Ordinance is intended to nor does in anyway limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Dated: August 18, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97–22534 Filed 8–22–97; 8:45 am]

BILLING CODE 4310–02–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Operation and Maintenance Rate Adjustment: Crow Irrigation Project, Montana

**ACTION:** Notice of proposed Irrigation Operation and Maintenance (O&M) Rate Adjustment.

**SUMMARY:** The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Crow Irrigation Project for 1998, 1999, 2000, 2001, and subsequent years from the current rate of $11.60 per acre. The following table illustrates the impact of the rate adjustment:

CROW IRRIGATION PROJECT

[Irrigation rate per assessable acre]

| Year | Present 1997 | Proposed 1998 | Proposed 1999 | Proposed 2000 | Proposed 2001 |
|---|---|---|---|---|---|
| Rate | $11.60 | $14.50 | $15.00 | $15.50 | $16.00 |

**FOR FURTHER INFORMATION CONTACT:** Area Director, Bureau of Indian Affairs, Billings Area Office, 316 North 26th Street, Billings, Montana 59101–1362, telephone (406) 247–7998.

**DATES:** Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before September 24, 1997.

**ADDRESSES:** All comments concerning the proposed rate increase must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS#4513–MIB, Code 210, 1849 "C" Street, NW, Washington, DC 20240, Telephone (202) 208–5480.

**SUPPLEMENTARY INFORMATION:** The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with § 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of the Crow Irrigation Project for Calendar Year 1998 and subsequent years.

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs,

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(d) Capitalization expenses;

(e) Acquisition expenses; and

(f) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

**Payments**

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

**Interest and Penalty Fees**

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. No water shall be delivered to any farm unit until all irrigation charges have been paid. After 180 days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Dated: August 13, 1997.

**Ada E. Deer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 97–22419 Filed 8–22–97; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Operation and Maintenance Rate Adjustment: Fort Hall Irrigation Project, Idaho

**ACTION:** Notice of Proposed Operation and Maintenance (O&M) Rate Adjustment.

**SUMMARY:** The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Fort Hall Irrigation Project, Michaud Unit, for 1998, 1999, and subsequent years. The following table illustrates the impact of the rate adjustment.

FORT HALL IRRIGATION PROJECT

[Michaud unit irrigation rate per assessable acre]

| Rate category | Present rate | Proposed 1998 rate | Proposed 1999 rate |
|---|---|---|---|
| Basic Rate | $25.50 | $26.50 | $27.50 |
| Pressure Rate | 37.50 | 38.50 | 39.50 |

**FOR FURTHER INFORMATION CONTACT:** Area Director, Bureau of Indian Affairs, Portland Area Office, 911 NE 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702.

**DATES:** Comments must be submitted on or before September 24, 1997.

**ADDRESSES:** Written comments on rate adjustments should be sent to Assistant Secretary—Indian Affairs, Attn: Branch of Irrigation and Power, MS–4513–MIB, Code 210, 1849 C Street, NW, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209, Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with § 171.1(e) of part 171, Subchapter H, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information for BIA operated and owned irrigation projects.

The purpose of this notice is to announce a proposed increase in the Michaud Unit, Fort Hall Irrigation Project, assessment rates proportionate with actual operation and maintenance costs. The change in the assessment rate is based on the electrical energy cost increase imposed by the Bureau of

Reclamation (BOR). In September 1996 the BOR notified us they are increasing the electrical energy charge for its users. The rate was set at 12.70 mills per kilowatt hour, an increase of 19.5%. The increased electrical energy cost was absorbed by the project during the 1997 irrigation season.

The assessment rates are based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his/her management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(d) Capitalization expenses;

(e) Acquisition expenses; and

(f) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

**Payments**

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

**Interest and Penalty Fees**

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. After 180 days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with the Debt Collection Improvement Act of 1996 (Public Law 104–134).

Dated: August 13, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97–22418 Filed 8–22–97; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–942–5700–00]**

### Filing of Plats of Survey; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

**EFFECTIVE DATE:** Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

**FOR FURTHER INFORMATION CONTACT:** Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 979–2890.

**SUPPLEMENTARY INFORMATION:** The Plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

**Mount Diablo Meridian, California**

T. 24 S., R. 37 E.,—Dependent resurvey, (Group 926) accepted July 10, 1997, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 24 S., R. 5 E.,—Dependent resurvey, subdivision, and survey, (Group 1184) accepted July 18, 1997, to meet certain administrative needs of the US Forest Service, Los Padres National Forest.

T. 15 S., R. 2 E.,—Metes-and-bounds survey, (Group 1270) accepted July 18, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Hollister Resource Area.

T. 22 S., R. 32 E.,—Dependent resurvey, survey and subdivision of sec. 32, (Group 1133) accepted July 24, 1997, to meet certain administrative needs of the US Forest Service, Sequoia National Forest.

T. 16 N., R. 5 E.,—Dependent resurvey, survey and subdivision, (Group 990) accepted July 24, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: August 15, 1997.

**Lance J. Bishop,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 97–22452 Filed 8–22–97; 8:45 am]

BILLING CODE 4310–40–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 16, 1997. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 9, 1997.

**Carol D. Shull,**

*Keeper of the National Register.*

**California**

**Los Angeles County**

Ridge Route, Old, Along Old Ridge Rte., roughly bounded by Dandberg and Canton Canyon, Castaic vicinity, 97001113.

**Colorado**

**Boulder County**

Denver, Northwestern and Pacific Railway Historic District (Boundary Increase), Former railbed and wagon rd. over Rollins Pass, Rollinsville vicinity, 97001114.

**Connecticut**

**Litchfield County**

Salisbury Center Historic District, Roughly along Academy, E. Main, Factory, and Main Sts., and 15 Undermountain Rd., Salisbury, 97001115.

**Delaware**

**New Castle County**

Penn Farm of the Trustees of the New Castle Common, 807 Frenchtown Pike, New Castle vicinity, 97001120.

**Sussex County**

Ross, Edgar and Rachel, House, 413 High St., Seaford, 97001118.

**District of Columbia**

**District of Columbia State Equivalent**

Building at 3901 Connecticut Ave., NW, (Apartment Buildings in Washington, DC, MPS), 3901 Connecticut Ave., NW, Washington, 97001117.

Traveling Carousel, Jct. of Massachusetts and Wisconsin Aves. NW, Washington, 97001116.

**Florida**

**Brevard County**

Field, J.R., Homestead, 750 Field Manor Dr., Indianola, 97001121.

**Georgia**

**Coweta County**

Tidwell—Amis—Haynes House, 1200 Sid Hunter Rd., Senoia vicinity, 97001124.

**Fulton County**

Davis, H.B., Building—Hotel Roxy, 764–772 Marietta St., Atlanta, 97001123.
Trio Steam Laundry, 19 Hilliard St., Atlanta, 97001122.

**Idaho**

**Bonneville County**

Idaho Falls Airport Historic District, 2381 Foote Dr., Idaho Falls, 97001126.

**Kentucky**

**McCreary County**

Barren Fork Coal Camp and Mine Archeological District, Address Restricted, Whitley City vicinity, 97001125.

**Louisiana**

**Plaquemines Parish**

Promised Land, 5907 LA 39, Braithwaite vicinity, 97001128.

**Vermilion Parish**

Richard Cattle Auction Barn, 1307 S. Henry St., Abbeville, 97001127.

**Maine**

**Franklin County**

Coplin Plantation Schoolhouse, ME 16, approx. 4.5 SW of jct. of ME 16 and ME 27, Stratton vicinity, 97001132.

**Hancock County**

Brown—Pilsbury Double House, 188–190 Franklin St., Bucksport, 97001129.

**Kennebec County**

Augusta City Hall, Former, 1 Cony St., Augusta, 97001134.

**Penobscot County**

Bangor Hose House No. 5, 247 State St., Bangor, 97001130.
District #5 School House, Billings Rd., 0.15 NE of jct. of US 2 and Billings Rd., Hermon, 97001131.

**Waldo County**

Penobscot Marine Museum (Boundary Increase), Church St., Searsport, 97001133.

**North Dakota**

**Burleigh County**

Bismarck Cathedral Area Historic District (Boundary Increase), Roughly along N. First, N. Mandan, N. Washington, and N. Raymond Sts., and Aves. C, D, and E West, Bismarck, 97001142.

**Ohio**

**Medina County**

Seville Jail, 70 W. Main St., Seville, 97001135.

**Puerto Rico**

**San Juan Municipality**

Linea Avanzada, E sector of the San Juan Islet, San Juan vicinity, 97001136.
Puerto Rico Ilustrado—Edificio El Mundo, San Jose #254, San Juan, 97001137.

**Tennessee**

**Cocke County**

Cocke County Memorial Building, 103 N. Cosby Hwy., Newport, 97001139.

**Davidson County**

Shute—Turner House, 4112 Brandywine Point Blvd., Nashville, 97001138.

**Rhea County**

Thomison, Dr. Walter, House, 656 Market St., Dayton, 97001140.

**Wisconsin**

**Iron County**

Plummer Mine Headframe, 0.25 mi. W of jct. of Plummer Mine Rd. and WI 77, Pence, 97001141.

[FR Doc. 97–22468 Filed 8–22–97; 8:45 am]
BILLING CODE 4310–70–P

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure

**AGENCY:** Judicial Conference of the United States; Advisory Committee on Rules of Bankruptcy and Criminal Procedure.

**ACTION:** Notice of open hearings.

**SUMMARY:** The Advisory Committees on Rules of Bankruptcy and Criminal Procedure have proposed the following rules:

Bankruptcy Rules—1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014;

Criminal Rules—6, 11, 24, 30, 54, and new Rule 32.2

Public hearings will be held on the amendments to: Bankruptcy Rules in Washington, D.C. on January 30, 1998; and Criminal Rules in New Orleans, Louisiana on December 12, 1997.

The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, no later than February 15, 1998.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D.C. 20544, at least 30 days before the hearing.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: August 18, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–22407 Filed 8–22–97; 8:45 am]
BILLING CODE 2210–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Sunshine Act Meeting

**AGENCY:** Institute of Museum and Library Services.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

**TIME/DATE:** 10:00 am–12:30 pm—Tuesday September 30, 1997.

**STATUS:** Open.

**ADDRESSES:** Old Post Office Building. Room 527, Washington, D.C. 20005, (202) 606–4649.

**FOR FURTHER INFORMATION CONTACT:** Isa Bauerlein, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506—(202) 606–4649.

**SUPPLEMENTARY INFORMATION:** The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Tuesday, September 30 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

**A True Copy—70th Meeting of the National Museum Services Board**

Old Post Office Building, Room 527, Washington, D.C. 10:00 AM–12:30 PM

*Agenda*

I. Chairman's Welcome and Approval of Minutes
II. Director's Report
III. Appropriations Report
IV. Legislative/Public Affairs Report
V. Office of Museum Services Program Reports
VI. Office of Library Services Program Reports

Dated: August 19, 1997.

**Linda Bell,**

*Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum and Library Services.*

[FR Doc. 97–22676 Filed 8–21–97; 12:58 pm]

BILLING CODE 7036–01–M

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meeting

**TIMES AND DATES:** 12:30 p.m., Monday, September 8, 1997; 8:30 a.m., Tuesday, September 9, 1997.

**PLACE:** Boston, Massachusetts, at the Westin Hotel, Copley Place, 10 Huntington Avenue, in the Essex Ballroom.

**STATUS:** September 8 (Closed); September 9 (Open).

**MATTERS TO BE CONSIDERED:**

Monday, September 8—12:30 p.m. (Closed)

1. Status Report on the Tray Management System.
2. Five-Year Strategic Plan.
3. Fiscal Year 1998 EVA Plan.
4. Fiscal Year 1997 PCES Recognition Awards.
5. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC97–3, Bound Printed Matter, Weight Limitations.
6. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC97–4, Bulk Parcel Return Service and Shipper Paid Forwarding.
7. Budget Outlook.

Tuesday, September 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 4–5, 1997.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Postal Rate Commission FY 1998 Budget.
4. Fiscal Year 1998 Operating Budget.
5. Preliminary FY 1999 Appropriation Request.
6. Tentative Agenda for the October 6–7, 1997, meeting in Norman, Oklahoma.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

**Thomas J. Koerber,**

*Secretary.*

[FR Doc. 97–22699 Filed 8–21–97; 2:55 p.m.]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Rule 17Ad-15, SEC File No. 270–360, OMB Control No. 3235–0409

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17Ad-15, Signature Guarantees, requires transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Also transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

It is estimated that there are 1,431 registered transfer agents. Of the 1,431 registered transfer agents, approximately 795 will receive fewer than 100 items for transfer. It is expected that most small transfer agents will have few, if any, rejections. The estimated number of hours necessary for each transfer agent to comply with the Rule 17Ad-15 is forty hours annually. The total annual burden is 31,800 hours for transfer agents, based upon past submissions. The average cost per hour is approximately $30. Therefore, the total cost of compliance for transfer agents is $954,000.

The retention period for the recordkeeping requirement under Rule 17Ad-15 is three years following the date of a rejection of transfer. The recordkeeping requirement under Rule 17Ad-15 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 18, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–22426 Filed 8–22–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38949; File No. SR–DTC–97–11]**

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

August 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 19, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The

[1] 15 U.S.C. 78s(b)(1).

Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change revises DTC's fee schedule for its transfer agent drop service ("TAD service"), which is attached as Exhibit 1.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

DTC's TAD service provides transfer agents located outside of New York City with a central location within Manhattan for the receipt of securities from banks, broker-dealers, depositories, and shareholders.[3] Until 1996, a similar service was offered by the New York office of the Midwest Clearing Corporation ("MCC").[4]

The purpose of the proposed rule change is to revise the fees associated with DTC's TAD service. DTC continually strives to align service fees with estimated service costs, and the subject revisions are part of that effort. DTC currently charges the users of its TAD service the same fees that MCC had charged since 1994 for its drop services.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants and other parties who use DTC's TAD service.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No comments on the proposed rule change were solicited or received.

**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)(ii)[6] of the Act and pursuant to Rule 19b–4(e)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–11 and should be submitted by September 15, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a complete description of the TAD service, refer to Securities Exchange Act Release No. 37562 (August 13, 1996), 61 FR 43283 [File No. SR–DTC–96–09] (order approving proposed rule change.)

[4] MCC withdrew from the clearing and depository business in 1996. Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 [File Nos. SR–CHX–95–27, SR–DTC–95–22, SR–MCC–95–04, SR–MSTC–95–10, SR–NSCC–95–15) (order approving MCC's withdrawal from the clearance and settlement business).

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

EXHIBIT 1.—TRANSFER AGENT DROP SERVICE FEES

| Type of service | Present fee | New fee |
|---|---|---|
| Monthly Service Charge | $250.00 | $500.00 |
| Window Tickets Issued | .75 | 1.00 |
| Microfilming (Per Hour) | 14.50 | 15.00 |
| Microfilming Securities (Per Roll) | 15.75 | 16.00 |
| Dividend Reinvestment Plan Voluntary Contributions (Window Ticket Per Check) | .75 | 1.00 |
| Wire Transfer Service (Window Ticket Per Check) | .75 | 1.00 |
| Check Collection (Window Ticket Per Check) | .75 | 1.00 |
| Routing Envelopes (Window Ticket Per Check) | .75 | 1.00 |
| Daily Valuation (Daily Flat Fee) | 175.00 | [1] 25.00 to 175.00 |
| Midnight Closings (Per Occurrence) | 1,000.00 | 1,000.00 |

[1] Depending on number of issues and activity.

[FR Doc. 97–22525 Filed 8–22–97; 8:45 am]
BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38950; File No. SR–DTC–97–07]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Disclosure Requirements for Transactions Involving Inflation Indexed Securities through the Institutional Delivery System

August 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 19, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–97–07) as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 purpose of the proposed rule change is to amend Section M of DTC's participant operating procedures in accordance with certain disclosure requirements for transactions involving inflation indexed securities processed through DTC's Institutional Delivery ("ID") system.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PSA The Bond Market Trade Association ("PSA") on behalf of its members and all other registered brokers and dealers, received no-action and interpretive relief from the Commission and the Treasury (collectively "interpretive relief")[3] regarding the application of certain regulations to inflation indexed securities issued by the U.S. Treasury Department ("Treasury"). The purpose of the proposed rule change is to enable broker-dealers that use DTC's ID system for generating confirmations for their customer transactions to comply with the disclosure requirements set forth in the interpretative relief.

The interpretative relief requires broker-dealers to disclose in confirmations for inflation indexed securities that yield to maturity may vary due to inflation adjustments or provide disclosure to similar effect. A broker-dealer using the ID system can enter data in the security type field identifying the security as an inflation indexed security by using a designated acronym (*i.e.*, "ITS"). Under the proposed rule change, DTC will add procedures to its ID system to provide that when the designated acronym identifying an inflation indexed security appears in the security type field of the ID confirmation, the required disclosure will be deemed to be a part of the ID confirmation for that transaction.

The interpretative relief also requires confirmations involving inflation indexed securities for when-issued transactions and for transactions in the Treasury's Separate Trading of Registered Interest and principal of Securities ("STRIPS") program to disclose the real yield (*i.e.*, nominal yield not adjusted for inflation) for the securities.[4] Under the proposed rule change, a broker-dealer using the ID system to send confirmations for such transactions will be able to disclose the real yield by entering that figure either in the yield field or in the special instructions field of trade data submitted to the ID system.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because the proposed rule change will assure the safeguarding of securities and funds which are in the custody or control of DTC by facilitating the confirmation of transactions in inflation indexed securities through the use of DTC's system.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Paul Saltzman, Senior Vice President and General Counsel, PSA The Bond Market Association, (January 17, 1997); letter from Richard L. Gregg, Commissioner, Bureau of the Public Debt, Department of the Treasury, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission (January 17, 1997).

[4] PSA The Bond Market Association Trading Practice Guidelines for Inflation Indexed Securities (December 18, 1996).

[5] 15 U.S.C. 78q–1.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed rule change was developed through discussions with PSA acting on behalf of its members and with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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 DTC 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–07 and should be submitted by September 15, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**
*Deputy Secretary.*

[FR Doc. 97–22526 Filed 8–22–97; 8:45 am]
BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38948; File No. SR–OCC–97–05]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Early Warning Notices

August 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on May 15, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to revise OCC's Rule 303 to expand the circumstances under which a clearing member is to provide OCC with early warning notices.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to revise OCC's Rule 303 to expand the circumstances under which a clearing member is to provide OCC with early warning notices. Currently, Rule 303 requires a clearing member to provide OCC with an early warning notice if it experiences certain enumerated financial difficulties or if it has provided any notice required pursuant to Commission Rule 15c3–1(e)(1)(iv).[3] Specifically, Rule 303 would be expanded to explicitly provide that a clearing member must immediately notify an officer of OCC of any notice that such clearing member gives, is required to give, or receives from any regulatory organization regarding any financial difficulty affecting the clearing member or of any failure by the clearing member to be in compliance with the financial responsibility rules or capital requirements of any regulatory organization. As proposed, Rule 303 would require the clearing member to promptly confirm such notice in writing. In addition, the lead-in language of (b) and (c) of Rule 303 (as relettered) will be revised to conform to the requirement in new paragraph 303(a) that an officer of OCC be notified by telephone of any notice described in the paragraph.

The term "regulatory organization" will be defined in proposed Interpretations and Policies .01 to mean (i) the Commission and any other federal or state regulatory agency having jurisdiction over the clearing member including the Commodity Futures Trading Commission ("CFTC") in the case of a clearing member which is subject to the jurisdiction of the CFTC; (ii) any self-regulatory organization as defined in Section 3(a) of Act[4] of which the clearing member is a member or participant; (iii) any clearing organization, as defined in Regulation Section 1.3(d) under the Commodity Exchange Act,[5] board of trade, contract market, and registered futures association of which the clearing member is a member or participant; and (iv) in the case of a non-U.S. clearing member, any non-U.S. regulatory agency or instrumentality or independent organization or exchange having jurisdiction over the non-U.S. clearing member or of which the non-U.S. clearing member is a member or participant.

OCC believes that these amendments will enhance the effectiveness of its financial surveillance program by providing OCC with material information, some of which it currently

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 17 CFR 240.15c3–1(e)(1)(iv). Rule 15c3–1(e) requires broker-dealers to provide written notice to the Commission in connection with certain transactions involving a significant withdrawal of equity capital.

[4] 15 U.S.C. 78c(a).

[5] 17 CFR 1.3(d).

does not receive, concerning a clearing member's financial condition. For example, many of OCC's clearing members are also registered as futures commission merchants ("FCMs") under the Commodity Exchange Act and as such are subject to the financial reporting requirements of the CFTC and the early warning notice requirements of commodity self-regulatory organizations. Because of differences in the early warning notice criteria used by the commodity regulatory organizations and those of securities regulatory organizations, events triggering early warning notice requirements for an FCM (*e.g.*, net capital below a specified percentage of segregated funds) would not necessarily create an early warning notice requirement for a registered broker-dealer. Consequently, under OCC's current rules, a situation could occur that would require a clearing member to give early warning notice to its commodity regulatory authority but would not require notice to be given to OCC. Accordingly, requiring a clearing member to provide OCC with early warning notices which it is required to provide to any other regulatory organization should assist OCC in assessing the ongoing creditworthiness of its clearing members.

OCC believes that there is potential overlap between the requirements of new Rule 303(a) and existing Rule 303(c) (as relettered), such that a non-U.S. clearing member might be required to notify OCC of a notice from a non-U.S. regulatory agency pursuant to both paragraphs.[6] However, OCC believes that the overlap should not impose an inappropriate burden on non-U.S. clearing members because the requirement to notify OCC of an event can be satisfied by the same notice to OCC even if the requirement arises under both paragraphs.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[7] in that it strengthens OCC's rules relating to financial surveillance and financial responsibility which are designed, in general, to protect OCC, clearing members, and the investing public.

[6] Existing paragraph (c) of Rule 303 (as relettered) currently provides that an exempt non-U.S. clearing member must notify OCC promptly of any violation on its part of the rules or regulations of its non-U.S. regulatory agency or any notice received from such agency that alleges a violation of such rules or regulations, informs the non-U.S. clearing member that it may violate such rules or regulations, or informs the non-U.S. clearing member that it has triggered any provision relating to early warning notices contained in such rules or regulations.

[7] 15 U.S.C. 78q–1.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC 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 and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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 OCC 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–05 and should be submitted by September 15, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

[8] 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–22527 Filed 8–22–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38945; File No. SR–PCX–97–27]**

## Order Approving Proposed Rule Change

August 18, 1997.

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to The Addition of a Public Governor to its Board of Governors and Permitting an Additional Public Governor to Serve on the Executive Committee.

On June 27, 1997, the Pacific Exchange ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to add a public governor to its Board of Governors and to permit an additional public governor to serve on the Executive Committee of the Exchange. The Commission published notice of the proposed rule change in the **Federal Register** on July 16, 1997.[3] This order approves the proposed rule change.

**I. Description of the Proposal**

PCX is amending Sections 1(a) and 6 of Article II and Section 2(a) of Article III of its Constitution so that an additional individual from the public sector may serve on the Board of Governors and to permit an additional public governor to serve on the Executive Committee for the Exchange. This proposed rule change will result in the PCX Board having seven public governors on its twenty-two person Board. Also, the Executive Committee, comprised of six governors, will now have two public governors versus the current single public governor. In addition, the proposed rule change contains an alteration to the text of Section 2(a), establishing gender neutral language for that provision.

**II. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38821 (July 8, 1997), 62 FR 38180.

applicable to a national securities exchange, and in particular, the requirements of Sections 6(b)(5) in that it is designed to prevent fraudulent, manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest.[4]

The Commission believes that another public governor on the Exchange Board will render the Board more balanced, fair and effective. Similarly, adding another public governor to serve on the Executive Committee will serve to increase the influence of outside directors regarding the administration of the Exchange.

While the Commission views the addition of a public member to the Exchange's Board of Governors as an encouraging initial step towards a more balanced Board composition, the Commission continues to encourage the Exchange to consider adding more public members to its Board in order to achieve a public majority on the Board. The Commission believes that significant representation by public governors on the Board is desirable and should ensure better protection of investors and the public interest. Public governors are likely to have little or no stake in internal Exchange politics, and, if carefully selected, public governors should bring diverse experience and increased ethical sensitivity to the Board, thus enhancing the confidence of members and of the public in the Exchange's ability to govern its members appropriately.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act[5] that the proposed rule change (SR–PCX–97–27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–22427 Filed 8–22–97; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted on or before October 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Validation of Pass Registration."

*Type of Request:* Extension of a currently approved collection.

*Form No's:* 1167 and 1395.

*Description of Respondents:* Small Businesses interested in federal procurement opportunities.

*Annual Responses:* 242,000.

*Annual Burden:* 47,333.

*Comments:* Send all comments regarding this information collection to Glen Harwood, Pass Program Manager, Office of Government Contracting, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6469.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

*Title:* "Low Doc Loan Program Customer Satisfaction Survey."

*Type of Request:* Extension of a currently approved collection.

*Form No:* 1921.

*Description of Respondents:* Low Doc Loan Participants.

*Annual Responses:* 3,000.

*Annual Burden:* 600.

*Comments:* Send all comments regarding this information collection to George Price, Director, Market Research, Small Business Administration, 409 3rd Street, S.W., Suite 7600, Washington, D.C. 20416. Phone No: 202–205–7124.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

*Title:* "Certified Development Company Program Annual Report Guide."

*Type of Request:* Extension of a currently approved collection.

*Form No's:* 1253 and 1253A.

*Description of Respondents:* Certified Development Companies.

*Annual Responses:* 300.

*Annual Burden:* 10,800.

*Comments:* Send all comments regarding this information collection to Michael J. Dowd, Director, Office of Program Development, Small Business Administration, 409 3rd Street, S.W., Suite 8300, Washington, D.C. 20416. Phone 202–205–6570.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

*Title:* "Client's service report and verification form (Non-Task order service) 7 (J)."

*Type of Respondents:* Extension of a currently approved collection.

*Form No:* 1538.

*Description of Respondents:* Minority Small Businesses.

*Annual Responses:* 2,000.

*Annual Burden:* 167.

*Comments:* Send all comments regarding this information collection to Arthur Collins, Assistant Administrator, Office of Program Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416, Phone No: 202–205–6421.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to enhance the quality.

Dated: August 20, 1997.

**Vanessa K. Smith,**

*Acting Chief, Administrative Information Branch.*

[FR Doc. 97–22532 Filed 8–22–97; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #2970, Amdt. 2]**

### State of Idaho

In accordance with a notice from the Federal Emergency Management Agency dated August 11, 1997, the above-numbered Declaration is hereby amended to include Bonneville County, Idaho as a disaster area due to damages caused by severe storms, snowmelt, land and mud slides, and flooding which occurred March 14 through June 30, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Teton and Lincoln in the State of

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

Wyoming may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 22, 1997 and for economic injury the termination date is April 22, 1998.

The economic injury number for the State of Wyoming is 958000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 13, 1997.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 97–22530 Filed 8–22–97; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

**SUMMARY:** The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 35 existing Small Business Development Centers (SBDCs) for refunding on January 1, 1998, subject to the availability of funds. Ten states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the addresses section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

**DATES:** A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

**ADDRESSES:**

**Addresses of Relevant SBDC State Directors**

Mr. Michael York, State Director, Maricopa Community College, 2411 West 14th Street, Tempe, AZ 85281–6941, (602) 731–8202

Mr. Michael Finnerty, State Director, Salt Lake Community College, 1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481

Ms. Kimberly Neri, State Director, California Trade & Comm. Agency, 801 K Street, Suite 1700, Sacramento, CA 95814, (916) 324–5068

Ms. Cec Ortiz, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3809

Mr. Woodrow McCutchen, Director, Howard University, 2600 6th St., NW., Room 125, Washington, DC 20059, (202) 806–1550

Mr. Jerry Cartwright, State Director, University of West Florida, 19 West Garden Street, Pensacola, FL 32501, (904) 444–2060

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 933–3515

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Admin., Room 411, Reno, NV 89557–0100, (702) 784–1717

Mr. Jeffrey Mitchell, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856

Mr. Steve Thrash, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204, (317) 264–6871

Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (603) 862–2200

Mr. Charles Davis, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420

Mr. Ronald Hall, State Director, Small Business Dev. Center, 2727 Second Avenue, Detroit, MI 48201, (313) 964–1798

Mr. Scott Daugherty, State Director, University of North Carolina, 333 Fayetteville Street Mall, Suite 1150, Raleigh, NC 27514, (919) 715–7272

Mr. Wally Kearns, State Director, University of North Dakota, Gamble Hall, University Station, Grand Forks, ND 58202–7308, (701) 777–3700

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (405) 924–0277

Ms. Erica McIntyre, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 262–3878

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219

Mr. Douglas Jobling, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111

Mr. John Lenti, State Director, University of South Carolina, College of Business Admin., 1710 College Street, Columbia, SC 29208, (803) 777–4907

Mr. Robert Ashley, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5498

Dr. Kenneth J. Burns, State Director, University of Memphis, South Campus, Building #1, Memphis, TN 38152, (901) 678–2500

Ms. Carol Riesenberg, State Director, Washington State University, 501 Johnson Tower, Pullman, WA 99164–4851, (509) 335–1576

Dr. Stephen L. Marder, Executive Director, University of Guam, PO Box 5061, UOG Station, Mangilao, GU 96923, (671) 735–2590,1,2,3

**FOR FURTHER INFORMATION CONTACT:** Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW, Suite 4600, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:**

**Description of the SBDC Program**

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

**Program Objectives**

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

**SBDC Program Organization**

The lead SBDC operates a statewide or regional network of SBDC subcenters. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

**SBDC Services**

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

**SBDC Program Requirements**

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate subcenters so that they are as accessible as possible to small businesses;

(b) Open all subcenters at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each subcenter.

Dated: August 19, 1997.

**Johnnie L. Albertson,**

*Associate Administrator for Small Business Development Centers.*

[FR Doc. 97–22528 Filed 8–22–97; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

**AGENCY:** Small Business Administration.

**ACTION:** Notice of action subject to intergovernmental review under Executive Order 12372.

**SUMMARY:** The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 1997, subject to the availability of funds. Four states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 30 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the addresses section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

**DATES:** A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 15 days from the date of publication of this notice to the SBDC.

**ADDRESSES:**

**Addresses of Relevant SBDC State Directors**

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, 1222 North Main Street, San Antonio, TX 78212, (210) 458–2450

Ms. Hazel Kroesser Palmer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East, Charleston, WV 25301, (304) 558–2960

Mr. John P. O'Connor, State Director, University of Connecticut, 2 Bourn Place, U–94, Storrs, CT 06269–5094, (203) 486–4135

Mr. Clinton Tymes, State Director, University of Delaware, Suite 005—Purnell Hall, Newark, DE 19711, (302) 831–2747

Dr. Elizabeth Gatewood, Region Director, University of Houston, 1100 Louisiana, Suite 500, Houston, TX 77002, (713) 752–8444

Ms. Janet Holloway, State Director, University of Kentucky, 225 Business & Economics Bldg., Lexington, KY 40506–0034, (606) 257–7668

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 860–5833

Mr. James Graham, State Director, University of Maryland at College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20740, (410) 403–8300

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973

Ms. Diane Wolverton, State Director, University of Wyoming, PO Box 3622, Laramie, WY 82071–3622, (307) 766–3505

Mr. Raleigh Byars, State Director, University of Mississippi, Old Chemistry Building, University, MS 38677, (601) 232–5001

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (314) 882–0344

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, PO Box 422, Randolph Center, VT 05060, (802) 728–9101

Mr. Chester Williams, Director, University of the Virgin Islands, 8000 Nisky Center, Suite 202, St. Thomas, US V. Islands 00802, (809) 776–3206

Ms. Carmen Marti, Territorial Director, Inter American University, Ponce de Leon Avenue, #416, Edificio Union Plaza, Suite 7–A, Hato Rey, PR 00918, (787) 763–5108

**FOR FURTHER INFORMATION CONTACT:** Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW, Suite 4600, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:**

**Description of the SBDC Program**

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

**Program Objectives**

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;
(c) Assist more small businesses; and
(d) Broaden the delivery system to more small businesses.

**SBDC Program Organization**

The lead SBDC operates a statewide or regional network of SBDC subcenters. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

**SBDC Services**

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

**SBDC Program Requirements**

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate subcenters so that they are as accessible as possible to small businesses;

(b) Open all subcenters at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each subcenter.

Dated: August 19, 1997.

**Johnnie L. Albertson,**

*Associate Administrator for Small Business Development Centers.*

[FR Doc. 97–22529 Filed 8–22–97; 8:45 am]

BILLING CODE 8025–01–U

## SMALL BUSINESS ADMINISTRATION

### Surrender of License

Notice is hereby given that the following (see list below) Small Business Investment Companies have surrendered their license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). The following Small Business Investment Companies were licensed by the Small Business Administration on (see licensed date indicated).

| License No. | SBIC name | Date licensed | City and State | Date surrendered |
|---|---|---|---|---|
| 01/01–0309 | Alta Capital Corporation | 11/24/1980 | Boston, MA | 05/21/1985 |
| 01/02–0029 | Asset Capital & Management Corp | 09/14/1960 | Stratford, CT | 04/07/1997 |
| 09/09–5222 | Associates Venture Capital Corp | 06/28/1978 | San Francisco, CA | 05/10/1990 |
| 06/06–0242 | BancTexas Capital, Inc | 02/27/1981 | Dallas, TX | 06/26/1988 |
| 09/09–0163 | Brantman Capital Corp | 04/25/1973 | Tiburn, CA | 09/29/1992 |
| 06/06–5177 | Business Capital Corp | 06/16/1975 | New Orleans, LA | 06/28/1984 |
| 06/06–0253 | Business Capital Corp. of Arlington | 09/30/1982 | Dallas, TX | 01/24/1992 |
| 02/02–5296 | CEDC MESBIC, Inc | 12/29/1972 | Hempstead, NY | 01/28/1992 |
| 05/07–5086 | CEDCO Capital Corporation | 01/22/1976 | Chicago, IL | 04/16/1992 |
| 04/05–0057 | CSRA Capital Corp | 05/01/1962 | Augusta, GA | 09/27/1996 |
| 06/10–0150 | Capital Marketing Corp | 06/24/1968 | Keller, TX | 04/21/1997 |
| 02/02–0082 | Capital for Future, Inc | 06/12/1961 | New York, NY | 12/31/1984 |
| 02/02–0410 | Clinton Capital Corp | 10/22/1980 | New York, NY | 01/20/1995 |
| 05/07–0070 | Commerce Capital Corp | 11/17/1962 | Milwaukee, WI | 09/23/1996 |
| 09/09–5298 | Dime Investment Corporation | 07/07/1982 | Los Angeles, CA | 05/13/1997 |
| 03/03–5114 | District of Columbia Investment Company | 03/05/1973 | Washington, DC | 08/10/1989 |
| 08/02–0395 | ES One Capital Corp | 06/02/1980 | Denver, CO | 11/13/1985 |
| 06/06–0231 | Energy Capital Corp | 09/09/1980 | Houston, TX | 05/14/1987 |
| 04/05–5102 | Enterprises Now, Inc | 03/13/1972 | Atlanta, GA | 10/08/1982 |
| 02/02–0016 | Equitable SBI Corp | 06/30/1960 | New York, NY | 02/03/1984 |
| 04/05–0022 | First North Florida SBIC Company | 12/17/1980 | Quincy, FL | 09/24/1989 |
| 06/06–0171 | First Venture Corporation | 11/30/1979 | Bartlesville, OK | 09/10/1992 |
| 09/09–0211 | Florists Capital Corporation | 08/28/1978 | Culver City, CA | 08/29/1995 |
| 09/09–0300 | Hamco Capital Corporation | 03/01/1982 | San Francisco, CA | 09/26/1996 |
| 03/04–0100 | Hampton Roads SBIC | 02/05/1965 | Norfolk, VA | 11/12/1993 |
| 05/05–0154 | Heritage Venture Group, Inc | 08/12/1981 | Indianapolis, IN | 12/01/1987 |
| 06/05–0112 | Intercapco, Inc | 10/07/1976 | St. Louis, MO | 09/29/1995 |
| 02/02–0354 | International Film Investors LP | 11/22/1978 | New York, NY | 03/12/1990 |
| 02/02–0305 | J.H. Foster & Co | 11/26/1973 | New York, NY | 03/06/1987 |
| 03/03–5128 | LICO MESBIC Investment Co | 05/31/1977 | Beckley, WV | 07/06/1993 |
| 02/02–0314 | Lloyd Capital Corp | 12/10/1975 | Edgewater, NJ | 12/02/1985 |
| 09/09–5194 | MCA New Ventures, Inc | 07/22/1976 | Universal City, CA | 09/30/1996 |
| 06/06–5217 | MESBIC of San Antonio, Inc | 09/19/1979 | San Antonio, TX | 07/26/1991 |
| 02/03–0056 | Main Capital Investment Corp | 10/22/1964 | Hackensack, NJ | 05/29/1985 |
| 09/09–0293 | Metropolitan Venture Company, Inc | 09/30/1981 | Los Angeles, CA | 09/23/1996 |
| 02/02–0163 | Mid Atlantic Fund, Inc | 10/12/1961 | New York, NY | 02/20/1990 |
| 03/04–5111 | Minority Investments, Inc | 06/04/1971 | Silver Spring, MD | 02/08/1990 |
| 02/02–5474 | Monsey Capital Corp | 01/17/1985 | Monsey, NY | 09/24/1996 |
| 03/03–5116 | Norfolk Investment Company, Inc | 03/28/1974 | Norfolk, VA | 04/24/1994 |
| 05/05–0190 | North Star Ventures II, Inc | 05/17/1984 | Minneapolis, MN | 08/01/1990 |
| 05/08–0018 | Northland Capital Venture Partnership | 06/30/1967 | Duluth, MN | 04/08/1997 |
| 03/03–0062 | Osher Capital Corp | 04/09/1969 | Wyncote, PA | 03/01/1985 |
| 02/02–0352 | Percival Capital Corp | 01/15/1979 | New York, NY | 02/02/1990 |

| License No. | SBIC name | Date licensed | City and State | Date surrendered |
|---|---|---|---|---|
| 06/10–0057 | Rice Investment Company | 08/23/1961 | Houston, TX | 04/19/1991 |
| 01/02–0052 | SBIC of Connecticut Inc. (The) | 01/31/1961 | Turnbull, CT | 12/29/1995 |
| 02/02–0375 | Sherwood Business Capital Corp | 11/23/1979 | Port Chester, NY | 12/18/1985 |
| 04/04–5133 | Southern Inv. & Funding Corp. Inc | 10/26/1977 | Atlanta, GA | 10/19/1992 |
| 09/09–5176 | United Business Ventures, Inc | 11/01/1974 | Carson, CA | 08/31/1989 |
| 04/04–5104 | Urban Ventures, Inc | 06/09/1972 | Miami, FL | 02/14/1990 |
| 09/09–0175 | Walden Capital Corp | 12/17/1974 | San Francisco, CA | 09/05/1990 |
| 03/03–0180 | Washington Ventures, Inc | 12/03/1986 | Washington, DC | 05/21/1997 |
| 09/09–0226 | West Coast Venture Capital | 05/22/1979 | Cupertino, CA | 12/03/1984 |
| 06/06–0248 | Western Venture Capital Corp | 08/03/1981 | Tulsa, OK | 04/05/1991 |

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of each license was accepted on (see surrender date indicated) and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 19, 1997.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 97–22531 Filed 8–22–97; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

**[Public Notice 2589]**

### Registration for the Diversity Immigrant (DV–99) Visa Program

**ACTION:** Notice of registration period and requirements for the fifth year of the Diversity Immigrant Visa Program.

This public notice provides information on the procedures for obtaining an opportunity to apply for one of the 55,000 immigrant visas to be made available in the DV category during Fiscal Year 1999. This notice is issued pursuant to 22 CFR 42.33, which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act (8 U.S.C. 1151(a)(3), 1153(c), and 1154(a)(1)(G)).

**Entry Procedures for the 55,000 Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 1999**

Sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, taken together established, effective for Fiscal Year 1995 and thereafter, an annual numerical limitation of 55,000 diversity immigrant visas to be made available to persons from countries that have had low rates of immigration to the United States. The DV–99 registration mail-in period will last 31 days and will be held from noon on October 24, 1997 through noon on November 24, 1997. This will give those eligible, both in the United States and overseas, ample time to mail in an entry.

**How Visas Are Apportioned**

The visas will be apportioned among six geographic regions. A greater number of visas will go to those regions that have had lower immigration rates as determined pursuant to INA 203(c). There is, however, a limit of seven percent (or 3,850) on the use of visas by natives of any one foreign state. The regions, along with their Fiscal Year 1999 allotments are:

*Africa:* 21,409; includes all countries on the African continent and adjacent islands.

*Asia:* 7,254; extends from Israel to the northern Pacific Islands, including Indonesia and Hong Kong, but excludes China, both mainland and Taiwan born, India, Philippines, South Korea, and Vietnam.

*Europe:* 23,024; extends from Greenland to Russia, including all countries of the former USSR, but excludes Great Britain (United Kingdom) and its dependent territories and Poland (Northern Ireland is eligible).

*North America:* 8; the Bahamas is the only eligible country this year (Canada is not eligible).

*Oceania:* 837; includes Australia, New Zealand, Papua New Guinea, and all countries and islands in the South Pacific.

*South America, Central America, and the Caribbean:* 2,468; extends from Central America (Guatemala) and the Caribbean nations to Chile but excludes Colombia, Dominican Republic, El Salvador, Jamaica, and Mexico.

**Eligibility**

Natives of "high admission" countries are not eligible for the program. "High admission" countries are defined as those from which the United States has received more than 50,000 immigrants during the last five fiscal years for which data are available in the immediate relative, or family or employment preference categories. [See INA 203(c)(1)(A)]. Each year the Immigration and Naturalization Services adds the family and employment immigrant admission figures for the previous five fiscal years to identify the countries that must be excluded from the annual diversity lottery. For 1999, "high admission" and therefore ineligible countries are:

Canada,
China (mainland and Taiwan born),
Colombia,
The Dominican Republic,
El Salvador,
India,
Jamaica,
Mexico,
The Philippines,
Poland,
South Korea,
United Kingdom (except Northern Ireland), and its dependent territories, and
Vietnam.

Note that the Hong Kong Administrative Region (SAR) is eligible; it is treated separately from China pursuant to the 1984 Sino-British Joint Declaration on the Question of Hong Kong, the 1990 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and the 1991 U.S.-Hong Kong Policy Act, 22 U.S.C. 5701 et seq. Northern Ireland is treated separately pursuant to INA 203(c)(1)(F).

**Requirements**

To apply for the 1999 Diversity Immigrant Visa Program an applicant must properly claim nativity in a qualifying country AND meet either the education or training requirement of the DV program.

*Nativity* in most cases is determined by place of birth. However, any alien born in a nonqualifying country may claim his or her spouse's birthplace (alternate chargeability) if the spousal relationship was established at the time the application for DV registration was

submitted. An alien born in a nonqualifying country in which neither parent was born nor resident at the time of the alien's birth, can also claim the birthplace of either parent. (INA 202(b).)

*Education or Training:* To be eligible to compete for consideration for a visa under the diversity program an alien must have EITHER a high school education or its equivalent, defined as successful completion of a 12-year course of elementary or secondary education in the United States OR two years work experience within the past five years in an occupation requiring at least two years of training or experience.

Applicants who do not meet these requirements SHOULD NOT submit an entry for the DV program.

**Fee and Form**

There is no fee and no special petition form that must be completed to enter. The entry must be typed or clearly printed in the English alphabet on a sheet of plain paper and must include the information below (preferably in the following order):

*1. Applicant's full name.*

Last Name (Surname/Family Name), First Name, and Middle Name (The Last Name/Surname/Family Name should be italicized.)

Example: *Public,* George James or *Public,* Sara Jane or *Lopez,* Juan Antonio.

*2. Applicant's date and place of birth.*

Date of birth: Day, Month, Year
Example: 15 November 1961
Place of birth: City/Town, District/ County/Province, Country
Example: Munich, Bavaria, Germany

Please use the current name of the country (e.g. Kazakstan, Russia, Croatia, Slovakia, Eritrea, etc.), if different from the name in use at the time of birth.

*3. Applicant's native country if different from country of birth.*

If an alien is claiming nativity in a country other than his or her place of birth, this country (instead of the country of birth) must be clearly indicated on the entry as well as in the upper left corner of the entry envelope.

*4. Name, date and place of birth of applicant's spouse and minor children, if any.*

The spouse and child(ren) of an applicant who is registered for DV–99 status are automatically entitled to the same status. To obtain a visa on the basis of this derivative status, a child must be under 21 years of age and unmarried. NOTE: Do Not list parents as they are not entitled to derivative status.

*5. Applicant's mailing address (and phone number, if possible).*

The mailing address must be clear and complete, since it will be to that address that the notification letter for the persons who are registered will be sent. A telephone number is optional but useful.

*6. A recent (preferably less than 6 months old) 1 1/2 inch (37 mm) square photograph of the principal applicant:* The applicant's name must be printed across the back of the photograph, which must be taped to the application with clear tape, not attached by staples or paper clips, which can jam the mail processing equipment. Photocopies are not acceptable.

*7. Principal applicant's signature is required on the entry:* The applicant must personally sign (preferably in the native alphabet) the entry using his or her normal signature, regardless of whether the entry is prepared and submitted by the applicant or someone else. Failure of the principal applicant to personally sign the entry will result in disqualification. (Only the principal applicant, not the spouse and children, needs to submit a signature and photograph.)

This information must be sent by regular mail or air mail to the postal addresses in Portsmouth, New Hampshire, designated for the principal applicant's native region (see addresses below). Entries must be mailed in envelopes [between 6 and 10 inches (15 to 25 cm) long and 3 1/2 to 4 1/2 inches (9 to 11 cm) wide]. Postcards are not acceptable, nor are envelopes inside express mail packets. The upper left-hand corner of the envelope must show the country to which the applicant is claiming nativity (or the country to which the alien is claiming entitlement), full name, and complete mailing address typed or clearly printed in the English alphabet.

Only one entry for each applicant may be submitted during the registration period. Duplicate or multiple entries will disqualify individuals from registration for this program. [See INA 204(a)(1)(6)(i)]. Entries received before or after the specified registration dates regardless of when they are postmarked and entries sent to an address other than one of those indicated below are void. All qualifying envelopes received during the registration period will be individually numbered and entries will be selected at random by computer regardless of time of receipt during the mail-in period. Selected entries will be registered and then notified as specified below.

**Where Entries Should Be Sent**

Note Carefully the Importance of Using the Correct Postal ZIP Code for Each Region.

*Asia:*
DV–99 Program, National Visa Center, Portsmouth, NH 00210, USA
*South America, Central America, and the Caribbean:*
DV–99 Program, National Visa Center, Portsmouth, NH 00211, USA
*Europe:*
DV–99 Program, National Visa Center, Portsmouth, NH 00212, USA
*Africa:*
DV–99 Program, National Visa Center, Portsmouth, NH 00213, USA
*Oceania:*
DV–99 Program, National Visa Center, Portsmouth, NH 00214, USA
*North America:*
DV–97 Program, National Visa Center, Portsmouth, NH 00215, USA

**Outside Attorneys or Consultants**

The decision to hire an attorney or consultant is entirely up to the applicant. Procedures for entering the Diversity Lottery can be completed without assistance following these simple instructions. However, if applicants prefer to use outside assistance, that is their choice. There are many legitimate attorneys and immigration consultants assisting applicants for reasonable fees, or in some cases for free. Unfortunately, there are other persons who are charging exorbitant rates and making unrealistic claims.

**Selection of Winners**

The selection of winners is made at random and no outside service can legitimately improve an applicant's chances of being chosen or guarantee that an entry will win. Any service that claims it can improve an applicant's odds is promising something it cannot lawfully deliver.

Persons who think they have been cheated by a U.S. company or consultant in connection with the Diversity Visa Lottery may wish to contact their local consumer affairs office or the National Fraud Information Center at 1–800–876–7060 or 1–202–835–0159 from 9:00 am to 5:30 pm (EST), Monday through Friday or (202) 835–0159; Internet address: http://www/fraud.org. The U.S. Department of State does not investigate consumer complaints against businesses in the United States.

**Notifying Winners**

*Only* successful entrants will be notified. They will be notified by mail between April and July of 1998 at the address listed on their entry. Winners will also be sent instructions on how to apply for an immigrant visa, including information on the fee for immigrant visas and a separate visa lottery

surcharge. Successful entrants must complete the immigrant visa application process and meet all eligibility requirements under U.S. law to be issued a visa.

Being selected as a winner in the DV Lottery does not automatically guarantee being issued a visa even if the applicant is qualified, because the number of entries selected and registered is greater than the number of immigrant visas available. Those selected will, therefore, need to complete and file their immigrant visa applications quickly. Once all 55,000 visas have been issued or on September 30, 1999, whichever is sooner, the DV Program for Fiscal Year 1999 will end.

**Obtaining Instructions on Entering the DV Lottery**

The above information on entering the DV–99 program is also available 24 hours a day to persons within the United States by calling the Department of State's Visa Lottery Information Center at 1–900–884–8840 at a flat rate of $5.10 per call. Callers will first hear some basic information about the DV Lottery and will be requested to provide their name and address so that printed instructions can be mailed to them. Applicants overseas may continue to contact the nearest U.S. Embassy or Consulate for instructions on the DV Lottery.

Dated: August 14, 1997.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 97–22256 Filed 8–22–97; 8:45 am]

BILLING CODE 4710–06–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Opportunity to Apply for Nomination to the World Trade Organization Dispute Settlement Roster of Panel Candidates—Extension of Time

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of extension of time limit for applications from the public.

By **Federal Register** Notice of July 10, 1997 (62 FR 37112) the Office of the U.S. Trade Representative announced the opportunity to apply for nomination by the United States to the World Trade Organization (WTO) indicative list of non-governmental persons for potential service as a panelist in settlement of WTO trade disputes. The application deadline cited was August 10, 1997. The deadline has been extended to September 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Information concerning the form of the application appears at 62 FR 37112–4. For further information on the form of the application, contact Ileana Falticeni, Litigation Assistant, USTR Office of Monitoring and Enforcement, (202) 395–3582. For information concerning WTO procedures or the duties involved, contact Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305 or Rebecca Reese, Director for Government Procurement, (202) 395–3063.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 97–22467 Filed 8–22–97; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Industry Functional Advisory Committee for Customs Matters (IFAC 1)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Functional Advisory Committee for Customs Matters (IFAC 1) will hold a meeting on September 18, 1997 from 9:30 a.m. to 12:45 p.m. The meeting will be open to the public from 11:30 a.m. to 12:45 p.m. and closed to the public from 9:30 a.m. to 11:30 a.m.

**DATES:** The meeting is scheduled for September 18, 1997, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Department of Commerce in Room 1414, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

**FOR FURTHER INFORMATION CONTACT:** Dan Gardner, Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, (202) 482–3681 or Bill Daley, Office of the United States Trade Representative, 600 17th St. NW., Washington, DC 20508, (202) 395–6120.

**SUPPLEMENTARY INFORMATION:** The IFAC 1 will hold a meeting on September 18, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United Sates Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 9:30 a.m. to 11:30 a.m. The meeting will be open to the public and press from 11:30 a.m. to 12:45 p.m. when other trade policy issues will be discussed. Presently scheduled are agenda items on Customs Automation and a Report on Regional Customs Meetings. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

**Phyllis Shearer Jones,**

*Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.*

[FR Doc. 97–22540 Filed 8–22–97; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describe the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on June 11, 1997 (62 FR 31862).

**DATES:** Comments must be submitted on or before September 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** Joel Richard, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, SW., Washington, D.C. 20590.

**SUPPLEMENTARY INFORMATION:**

**Maritime Administration (MARAD)**

*Title:* Inventory of American Intermodal Equipment.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0503.

*Affected Public:* U.S. Steamship and intermodal equipment leasing companies.

*Abstract:* The collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment.

*Need and Use of the Information:* The information contained in the inventory provides data about U.S.-based companies that own or lease intermodal equipment and is essential to both government and industry in planning for contingency operations.

*Estimated Annual Burden Hours:* 66 hours.

*Estimated Annual Respondents:* 22 companies.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 19, 1997.

**Vanester M. Williams,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 97–22518 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings Agreements Filed During the Week of August 11, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST–97–2793.
*Date Filed:* August 11, 1997.
*Parties:* Members of the International Air Transport Association.
*Subject:*
CAC/Reso/188 dated May 14, 1997.
Finally Adopted Resolutions r1–11.
Minutes—CAC/Meet/118 dated July 14, 1997.
Summary attached.
Intended effective date: September 1, 1997.

**Paulette V. Twine,**

*Chief, Documentary Services.*

[FR Doc. 97–22538 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 15, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–97–2794
*Date Filed:* August 11, 1997
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* September 8, 1997
*Description:*
Application of Tradewinds Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing Tradewinds to engage in interstate charter air transportation of persons, property and mail.

*Docket Number:* OST–97–2795
*Date Filed:* August 11, 1997
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* September 8, 1997
*Description:*
Application of Tradewinds Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing Tradewinds to engage in foreign charter air transportation of persons, property and mail.

**Paulette V. Twine,**

*Chief, Documentary Services.*

[FR Doc. 97–22537 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability

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

**ACTION:** Notice of availability of draft Environmental Impact Statement (EIS), notice of public comment period and schedule of public hearings; correction.

**SUMMARY:** This document contains a correction to the Notice referenced in **ACTION** above, as published in the **Federal Register** on August 15, 1997 [62 FR 43768]. The Notice announces numerous times, that public hearings will be held Wednesday, September 17, 1997, and Thursday, September 18, 1997. At one location the date is incorrectly listed as Thursday, October 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Wind Shear Products Team, AND–420, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9841.

Correction of Publication: In the notice document on page 43768 in the issue of Friday, August 15, 1997, make the following correction:

In the **DATES** section on page 43768, second column, at the last of four references to the hearing on Thursday the 18th, the month is listed as October. The month should be changed to read September.

Issued in Washington, DC on August 19, 1997.

**Carl P. McCullough,**

*Product Lead, Wind Shear Products Team, AND–420.*

[FR Doc. 97–22501 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Notice of Revision to Airport Capital Improvement Plan

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation.

**ACTION:** Notice of revision to Airport Capital Improvement Plan (ACIP) National Priority System.

**SUMMARY:** On May 22, 1996, the Federal Aviation Administration (FAA) issued a Notice requesting comments regarding the National Priority System (NPS) (61 **Federal Register** 25731). The NPS is used to assist in the development of the Airport Capital Improvement Plan (ACIP) as well as provide a basis for the

distribution of Airport Improvement Program (AIP) monies. Provided herein is a summary of the comments received and FAA responses. Based on these comments and additional direction from the Congress contained in the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264), the FAA has modified its NPS.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stan Lou, Manager, Programming Branch, APP–520, (202) 267–8809.

**SUPPLEMENTARY INFORMATION:** In response to the **Federal Register** notice of May 22, 1996, the FAA received forty-eight letters containing comments. Eighteen letters were received from State organizations; nine letters were received from trade organizations; fifteen were received from airports; and six were received from other respondents such as airport consultants.

The FAA has divided these comments into the following categories for evaluation: general comments, formula modifications, and consideration of other factors. A discussion of each category is provided below. FAA's response to all three categories follows this section.

The summary of comments is intended to represent the divergence or correspondence of industry views. It is not intended as an exhaustive restatement of comments received. All comments received were considered by the FAA, even if not specifically identified in this summary.

**Background**

Historically, the demand for discretionary funds has exceeded the amount available for distribution. As a result, a priority system was developed primarily to standardize evaluation of airport development projects. The priority system is a process that supports agency goals and objectives by ensuring that the highest priority development work is being completed nationwide. It uses a formula which generates a numeric value (national priority rating, NPR) for each project item taking into account project type and airport size. Under this system, project types are ranked by their purpose; projects ensuring airport safety and security are ranked as the most important priorities, followed by maintaining current infrastructure development, mitigating noise and other environmental impacts, meeting standards, and increasing system capacity. This system is designed to facilitate routine prioritization for all proposed AIP projects, and most AIP discretionary monies are distributed based on these numeric values. While the FAA's grant allocation process provides sufficient flexibility to consider other factors in addition to a project's priority rating, the use of these other factors has not been formalized.

**General Comments**

The three comments of a general nature suggested using the priority system to develop a National Plan of airport development, to develop a structured project selection process under AIP, and to provide more flexibility for individual airport innovation.

**FAA Should Modify NPS Formula**

Sixty-eight separate comments addressed some aspect of the formula used in rating projects under the NPS. The largest number of these comments objected to the higher weight that the NPS gives large and medium hub airports. Twenty-eight respondents indicated that the NPS formula favors larger airports to the detriment of smaller airports. In many of the comments, the argument was made that large airports are more likely to have access to non-federal sources of revenue to fund airport development and should not be granted an advantage over smaller airports which are more dependent on federal aid to fund airport development. The respondents included fifteen State organizations, three trade organizations, seven individual airports, and three others.

The second largest number of comments addressed the actual formula, discussing either the points assigned to each project category or the number and type of project categories. Twenty-four respondents either suggested some adjustment to points assigned a category or suggested additional categories.

A total of eight comments suggested that the categories used in the formula need to be better defined so that the aviation industry has an improved understanding of how the FAA ranks the importance of projects. Another six comments recommended that the use of the point totals should be reversed so that the FAA's highest priorities are reflected in highest scores (rather than the lowest score representing the highest priority).

Finally, two comments addressed the use of airport size as a factor for selection of noise projects. The respondents argued that airport size can be irrelevant to exposure to noise, e.g., two structures in the 75 DNL have similar noise exposure whether the airports are large hub airports or small hub airports.

**FAA Should Consider Other Factors in AIP Project Selection**

Twenty-nine comments supported use of the NPS, but in conjunction with input from FAA Regional Offices and Airports District Offices and from airport sponsors at time of AIP allocation decisions. A common objection was that the FAA's NPS only uses a single value to select projects and does not provide a formalized ability to account for factors both quantitative and qualitative such as local priorities, financial resources and risk assessments when selecting projects for Federal funding.

Twenty comments requested that local priorities or state priorities be considered in AIP project selection. Some suggested including the economic benefit of the airport to its community. Seven comments suggested assigning identical numeric priorities to all phases of a project. Under the existing system, for example, land acquisition required to construct a runway extension may have a lower priority than the construction of the runway extension itself, causing delays in the baseline project. Commenters suggested that all work elements contain the same priority as the baseline project.

Finally, two comments addressed issues such as prior commitments in project selection. Five comments addressed the role of cost factors in project selection. Two comments suggested consideration of future airport growth in project selection. Seven comments addressed use of Pavement Condition Index in pavement rehabilitation projects. Six comments suggested considering "economy of scale," whereby other development at the same airport may be raised in priority to take advantage of a contracting opportunity at that airport.

*FAA Response:* We agree that the formulation of a National Plan is essential to the safe and efficient operation of the National Airspace System (NAS). The National Plan of Integrated Airport Systems (NPIAS), as required by Section 47103 of Title 49 of United States Code (USC), is the FAA's document that provides long and short range cost estimates of AIP eligible projects associated with establishing a system of airports adequate to meet the needs of the NAS. The NPS has been created to prioritize these needs in accordance with the FAA's goals and objectives and rank them accordingly.

One element within the NPS is the NPR. The NPR has been used successfully as a screening tool to identify projects of sufficient national interest to warrant investment of

Federal funds. The priority system has taken on greater importance as AIP appropriations have decreased and as the FAA has been required to adopt performance measures and investment criteria to support grant allocation decisions.

The FAA realizes that a numerical rating alone cannot account for all quantitative and qualitative factors that may effect the importance of an individual airport development project. Factors such as benefit-cost analysis, impact on safety, and system performance should be considered when selecting projects for Federal funding. In addition, section 47115(d) of Title 49 USC, requires consideration of airport improvement priorities of the States, and regional offices of the Administration, to the extent such priorities are not in conflict with the effect the project will have on the overall national air transportation system capacity and the project benefit and cost.

The NPR serves as an initial screen for the majority of projects selected; and, on a more limited basis, the NPR is used in tandem with other factors. These other factors, in addition to the list provided in the previous paragraph, include environmental issues, regional, state and metropolitan system plans, airport growth, and market forces, which are considered in AIP project selection today. However, the current system does not have a formal process to account for these factors in project selection. As a result, the FAA will develop a process to serve as a secondary screen to the NPR and account for these other factors.

Although there is an element of the airport size in the priority calculations, the net effect of this element has been minimal in practice. This is due in part to discretionary set-asides and specific apportionments contained in the statutory distribution of AIP funds. Airport size will continue to be considered along with other factors for project selection. However, the introduction of the new priority calculation formula will permit a greater reliance on the actual project type as opposed to the airport type.

The FAA agrees that the current system has created confusion concerning the formula and how it is used. As a result, the FAA has included a definition section in this Notice for further clarification. Further, the FAA agrees that the point totals should be reversed for ease of application. Henceforth, under the revised system, the higher the point rating, the higher priority assigned to a project.

The FAA also agrees that all work items associated with a major airport improvement be treated as having one priority value. This policy is reflected in Appendix I.

In response to the comments that the NPS and the categories used in the National Priority Calculation should be better defined, we offer the following:

The ACIP is a product which helps identify, plan, fund, and execute airport development in such a way as to ensure that the highest and most critical needs are met with limited funding. It communicates needs and funding plans for airport sponsors, states, FAA, and others who have a stake in the development of the NAS.

The NPS is a tool by which FAA evaluates projects, contained in the ACIP, for AIP funding. NPS uses many factors: national plans; goals and objectives; anticipated AIP funding levels; a numerical project rating; and other regional and/or local factors as described in this notice.

In order to implement these concepts, a standard database has been established. This database (NPIAS–CIP) provides a common data structure to compile and analyze airport development needs. It is used by FAA to help determine the distribution of AIP discretionary funds in compliance with Title 49 USC.

An element of the NPS is the determination of objective priority ratings for airport projects. A numerical priority calculation ranks work items in accordance with agency goals and objectives. Priority numbers are calculated based on the size and type of airport (service level) and the type of project (as described by the NPIAS–CIP project codes). The revised NPS calculation provides a standard means to sort airport needs from highest to lowest priority, evaluates funding plans (the ACIP) versus the highest priority needs, improves upon the existing AIP priority system, and aids in project selection for discretionary funding.

The NPS calculation and project selection process are outlined in Appendix I.

The FAA appreciates the time and effort of the respondents. After carefully considering these comments and after evaluation of the additional statutory direction contained in Public Law 104–264, the FAA hereby issues the following Policy.

This policy is issued pursuant to the authority of Title 49, United States Code.

Issued in Washington, DC on August 19, 1997.

**Ellis A. Ohnstad,**

*Manager, Airports Financial Assistance Division.*

**Appendix I**

**Policy/Procedure**

a. Internal guidance will be published and revised as needed to carry out the intent of this notice. This guidance will be shared with states, sponsors and others as determined by each Regional Office.

b. It is the intent of this notice that all work items associated with major airport improvements should be treated as one priority value under the NPS, e.g., lighting and marking with runway reconstruction; land acquisition with obstruction removal. In these instances, ACIP program submittals should provide a complete schedule of projects for the entire major airport improvement.

c. Sound and consistent ACIP concepts must be employed by FAA, states, and sponsors for effective project selection.

d. The FAA Headquarters Office of Airport Planning and Programming will publish standard project descriptions and project coding requirements to ensure consistency nationally.

e. Use of passenger, cargo, and state area population entitlement funds is encouraged on high priority NPS projects. Final determination of actual discretionary funds availability may be based on entitlement usage as well as other factors.

f. Project justification for projects not included in the priority level or the listing of national program of candidate projects must be based on additional qualitative evaluation to be formalized prior to fiscal year 1999. Larger projects, requesting $5 million or more in discretionary funds, will require more in depth analysis both at the regional and national level, including benefit-cost analysis.

g. The FAA Headquarters Office of Airport Planning and Programming will publish recommended project evaluation analysis criteria which may be used for project selection and project justifications. This analysis will be consistent with Title 49 USC, related policy, and national FAA goals and objectives.

**Airport Improvement Program (AIP) Project Selection Process**

a. Regional Offices initiate the ACIP process through coordination and input from planning studies, sponsors, states, the NPIAS, national planning and other sources. An ACIP program of development for the upcoming fiscal year and beyond is submitted annually to FAA Headquarters Office of Airport Planning and Programming.

b. FAA Office of Airport Planning and Programming will apply numerical priority ratings to the ACIP program using an anticipated AIP funding level. The numerical priority ratings will serve as an initial screen to produce a listing of projects.

c. The projects that have successfully competed using the numerical ratings will be identified to the FAA Regional Offices.

Regional Offices, after review, may appeal to the FAA Office of Planning and Programming for any projects that have not qualified for further consideration. Acceptable projects plus those that rate above the priority level make up the national program of candidate projects.

d. After any limitation on contract authority is enacted through an appropriation act, the FAA Headquarters will advise FAA Regional Offices of actual funds availability based upon the appropriations act's enactment, ACIP programs, and other factors.

e. FAA will then make final selection of projects from the listing of candidate projects identified in step c., above, based on qualitative factors such as benefit-cost analysis, risk assessment, environmental issues, regional priorities, state and metropolitan system plans, airport growth, and market forces.

f. FAA Headquarters will evaluate national performance of the completed development program and make adjustments to the NPS as needed to ensure attainment of national goals and objectives. All adjustments to the NPS will be done in accordance with this Notice.

**National Priority Rating**

The following general equation was developed:

Priority Rating =
(k5*P)*[k1*APT)+(k2*P)+(k3*C)+(k4*T)]

Where:
k1 = 1.00
k2 = 1.40
k3 = 1.00
k4 = 1.20
k5 = 0.25
P = Purpose
C = Component
T = Type
APT = Airport

Various coefficients were evaluated to generate a NPR consistent with FAA objectives. This resulted in the following equation

Priority Rating=.25P*(APT+1.4P+C+1.2T)

The purpose code is used twice within the equation to signify added importance. The airport code is assigned a range of 2 to 5 to provide sufficient variability to the size of the airport; whereas, each of the other factors range from 0 to 10. These factors are assigned point values (pts) consistent with FAA goals and objectives.

APT=Airport Code

*Primary Commercial Service Airports*
Large and Medium Hub=5 pts
Small and Non Hub=4 pts

*Non Primary Commercial Service, Reliever, and General Aviation Airports*
*Based Aircraft or Itinerant Operations*
100 or 50,000=5 pts
50 or 20,000=4 pts
20 or 8,000=3 pts
<20 and <8,000=2 pts

P=Purpose Points (0 to 10 pts). (Purpose code definitions follow the listing of all codes)
CA=Capacity=7 pts
EN=Environment=8 pts
OT=Other=4 pts
PL=Planning=8 pts
RE=Reconstruction/Rehabilitate=8 pts
SA=Safety/Security=10 pts
SP=Statutory Emphasis Programs=9 pts
ST=Standards=6 pts

C=Component Points (0 to 10 pts). (Some codes are defined for clarification)
AP=Apron=5 pts
BD=Building=3 pts
EQ=Equipment=8 pts
FI=Financing (refers to financing costs associated with bond retirement)=0 pts
GT=Ground Transportation (refers to people movers and rail/road access)=4 pts
HE=Helipad=9 pts
HO=Homes (refers to noise mitigation measures for residences)=7 pts
LA=Land=7 pts
NA=New Airport=4 pts
OT=Other (refers to varying project elements; ie. fuel farms, airport drainage, etc.)=7 pts
PB=Public Bldg (refers to noise mitigation measures for public buildings)=7 pts
PL=Planning=7 pts
RW=Runway=10 pts
SB=Seaplane=9 pts
TE=Terminal=1 pt
TW=Taxiway=8 pts
VT=Vertiport=4 pts

T=Type Points (0 to 10 pts)
60=Outside 65 DNL=0 pts
65=65–69 DNL=4 pts
70=70–74 DNL=7 pts
75=Inside 75 DNL=10 pts
AC=Access to Airport=7 pts
AD=Administration Costs=0 pts
AQ=Acquire Airport=5 pts
BO=Bond Retirement=0 pts
CO=Construction=10 pts
DI=De-Icing Facility=6 pts
DV=Development Land=6 pts
EX=Extension/Expansion=6 pts
FF=Fuel Farm Development=2 pts
FR=Runway Friction=9 pts
IM=Improvements to Existing Infrastructure=8 pts
IN=Instrument Approach Aid=7 pts
LI=Lighting=8 pts
MA=Master Planning=9 pts
ME=Metropolitan Planning=7 pts
MS=Miscellaneous=5 pts
MT=Environmental Mitigation=6 pts
NO=Noise Plan/Suppression=7 pts
OB=Obstruction Removal=10pts
PA=Automobile Parking=1pt
PM=People Mover=3pts
RF=Aircraft Rescue Fire Fighting (ARFF) Vehicle=10pts
RL=Rail=3pts
SE=Security=6pts
SF=Runway Safety Area=8pts
SG=Runway/Taxiway Signs=9pts
SN=Snow Removal Equipment=9pts
SR=Sensors=8pts
ST=State Planning=8pts
SV=Airport Service Road=6pts
SF=Safety Zone (RPZ)=8pts
VI=Visual Approach Aid=8pts
VT=Construct V/Tol RW/Vert Plan=2pts
WX=Weather Reporting Equipment=8pts

Applying the above relationship produces a numerical value between 0 and 100 depending upon the associated values for APT, P, C and T. In general, projects with higher numerical values are most consistent with national goals. It is anticipated that periodically the individual point values and equation coefficients may be adjusted slightly to reflect modified system needs and priorities and experience gained in using the revised NPS.

**Purpose Category Definitions**

*Safety/Security*

Definition: This category includes items required by regulation in 14 CFR Part 107, 14 CFR part 139 or the Airport Certification Manual and those safety/security items that cannot be accommodated by any other operational procedures to maintain an equivalent level of safety/security. Also included is airport hazard removal/marking.

*Statutory Emphasis Programs*

Definition: This category includes items included in Title 49 USC, such as, runway grooving, friction treatment, and distance-to-go signs on all primary and secondary runways at commercial service airports; vertical visual guidance systems on all primary runways; and runway lighting, taxiway lighting, sign systems, and marking for all commercial service airports.

*Reconstruction/Rehabilitate*

Definition: This category is defined as development required to preserve, repair, or restore the functional integrity of eligible airport infrastructure.

*Environment*

Definition: This category includes actions necessary to carry out the statutes set forth in the National Environmental Policy Act (NEPA) and 14 CFR part 150. Such actions are defined within Environmental Assessments (EA), Environmental Impact Statements (EIS), and/or Noise Compatibility Programs (NCP).

*Planning*

Definition: This category includes the preliminary studies needed to define and prioritize specific airport needs. Items such as airport system and master planning are included in this category.

*Capacity*

Definition: This category includes development required to increase system capacity by increasing the airport's capacity beyond its present designed activity level. In this case, system capacity is defined as increasing capacity at individual airports experiencing or expecting to experience 20,000 hours or more of delay.

*Standards*

Definition: Development to bring existing airports up to recommended FAA design standards based on the current design category.

*Other*

Definition: This category includes development items other than those necessary to safely operate an airport or for improvement of airside capacity. Items such as people movers, rail systems, access roads, parking lots, fuel farms, and training systems are included in this category.

[FR Doc. 97–22494 Filed 8–22–97; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Flight Service Station at Pierre Regional Airport, Pierre, South Dakota

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

**ACTION:** Notice of closing.

**SUMMARY:** Notice is hereby given that on or about August 16, 1997 the Flight Service Station (FSS) at Pierre, South Dakota will be permanently closed. Services to the aviation public in the Pierre flight plan area, formerly provided by Pierre FSS, are being provided by the Automated Flight Service Station (AFSS) at Huron, South Dakota. This information will be reflected in the FAA organization statement the next time it is reissued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

**Cecelia Hunziker,**

*Regional Administrator, Great Lakes Region.*

[FR Doc. 97–22500 Filed 8–22–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33362]**

### Paducah & Louisville Railway, Inc.—Control Exemption—Paducah & Illinois Railroad Company

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board grants Paducah & Louisville Railway, Inc.'s (P&L) motion to dismiss its petition for exemption to control Paducah & Illinois Railroad Company (P&I) and, on the Board's own motion, exempts P&L from the prior approval requirements of 49 U.S.C. 11323(a)(6) for P&L's joint ownership of a one-third interest in P&I, subject to the labor protection requirements of 49 U.S.C. 11326(b).

**DATES:** The exemption will be effective on September 9, 1997. Petitions to stay must be filed by September 4, 1997 and petitions to reopen must be filed by September 19, 1997.

**ADDRESSES:** An original and 10 copies of all pleadings referring to STB Finance Docket No. 33362 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington DC 20423–0001; in addition a copy of all pleadings must be served on petitioner's representative: William A. Mullins, Troutman Sanders LLP, 1300 I St., N.W., Suite 500 East, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Decided: August 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–22536 Filed 8–22–97; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

**[Treasury Order Number 103–03]**

### Delegation of Authority Relating to Approval of Contract for Sale of Naval Petroleum Reserve Numbered 1

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. § 321(b), I hereby delegate to the Under Secretary for Domestic Finance the authority of the Secretary of the Treasury under section 3412(e)(4) of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106, 110 Stat. 186, 633) (the Act), to:

a. Review and approve, or disapprove, the draft contract or contracts for the sale of Naval Petroleum Reserve Numbered 1 (NPR–1), including the terms and provisions of the sale of the interest of the United States in NPR–1;

b. Review and approve, or disapprove, any material changes to such draft contract or contracts; and

c. Exercise any right or power, make any finding or determination, or perform any duty or obligation which the Secretary of the Treasury is authorized to exercise, make or perform under the Act related to approving or disapproving such draft contract or contracts.

2. This authority may be redelegated in writing to an appropriate subordinate official.

3. This Order shall terminate without any further action on September 30, 1998.

Termination of this Order shall have no effect upon actions taken within the scope of this Order before its termination.

Dated: August 15, 1997.

**Robert E. Rubin,**

*Secretary of the Treasury.*

[FR Doc. 97–22424 Filed 8–22–97; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Information Collection; Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled Disclosure of Financial and Other Information by National Banks—12 CFR 18.

**DATES:** Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC. Comments should be submitted by September 24, 1997.

**ADDRESSES:** A copy of the submission may be obtained by calling the OCC Contact listed. Direct all written comments to the Communications Division, Attention: 1557–0182, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disclosure of Financial and Other Information by National Banks—12 CFR 18

*OMB Number:* 1557–0182.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* This notice covers the disclosure requirements presently contained in 12 CFR Part 18, Disclosure of Financial and Other Information by National Banks. This disclosure of information is needed to facilitate informed decisionmaking by national banks' existing and potential customers and investors by improving public understanding of, and confidence in, the financial condition of the individual

national bank. The disclosed information is used by depositors, security holders, and the general public in evaluating the condition of, and deciding whether to do business with, a particular national bank. Disclosure and increased public knowledge complements OCC's efforts to promote the safety and soundness of national banks and the national banking system.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 2,800.

*Total Annual Responses:* 2,800.

*Frequency of Response:* Annual.

*Estimated Total Annual Burden:* 1,400 hours.

*OCC Contact:* Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

*OMB Reviewer:* Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0184, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

The OCC may not conduct or sponsor, and respondent is not required to respond to, an information that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 18, 1997.

**Mark Tenhundfeld,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 97–22458 Filed 8–22–97; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### United States Customs Service

[T.D. 97–73]

### Extension of Inspectorate America Corporation's Customs Gauger Approval to the New Site Located in Ironton, OH

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of the extension of Inspectorate America Corp.'s Customs gauger approval to include its Ironton, OH facility.

**SUMMARY:** Inspectorate America Corp., of Houston, TX, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval to include the Ironton, OH site. Specifically, this site has been given Customs approval under Part 151.13(a)(1) of the Customs Regulations to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and animal and vegetable oils in all Customs Ports.

**SUPPLEMENTARY INFORMATION:**

**Background**

Part 151 of the Customs Regulations provides for the acceptance at Customs Ports of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Inspectorate America Corp., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval to its Ironton, OH facility. Review of the qualifications of the site shows that the extension is warranted and, accordingly, has been granted.

**Location**

Inspectorate America Corp.'s site is located at 110 N. 3rd Street, Masonic Temple Bldg., Room 209, Ironton, OH 45638.

**EFFECTIVE DATE:** June 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Marcelino Borges, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: August 12, 1997.

**J.E. Harrell,**

*Acting Director, Laboratories and Scientific Service.*

[FR Doc. 97–22457 Filed 8–22–97; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Privacy Act of 1974; System of Records

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

**ACTION:** Notice of alteration to an existing Privacy Act system of records.

**SUMMARY:** The Treasury Department, Internal Revenue Service, gives notice of the proposed alteration to Treasury/IRS 24.046—Business Master File (BMF), Taxpayer Services, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

**EFFECTIVE DATE:** Comments must be received no later than September 24, 1997. The alteration to the system of records will be effective October 6, 1997, unless comments are received which result in a contrary determination.

**ADDRESSES:** Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

**FOR FURTHER INFORMATION CONTACT:** John Coulter, Office of Chief Counsel, Income Tax and Accounting, at (202) 622–4940, or Luetta Donalds, Office of Payer Compliance, at (202) 622–8753, National Office, Internal Revenue Service.

**SUPPLEMENTARY INFORMATION:** The IRS is making certain changes to Treasury/IRS 24.046—Business Master File (BMF), Taxpayer Services. The alterations reflect changes that are necessary to the system to implement the Federal Agency Taxpayer Identification Number Matching Program, change the system name and title of the system owner to reflect the new organizational structure of the IRS, and to list new locations in which system records are kept.

To improve administration of the backup withholding provision of § 3406 of the Internal Revenue Code, IRS may inform Federal agencies monthly if the Employer Identification Numbers (EINs) of sole proprietors that IRS has on record match the records of the agencies. This should reduce the number of times agencies will need to impose backup withholding on payments, and increase compliance. IRS has added a new routine use and expanded the categories of individuals covered by the system to implement this change.

The categories of individuals covered by the system have been expanded to include sole proprietors who file business returns.

The categories of records in the system have been expanded to include ElNs/name control files which contain EINs and the associated IRS name controls.

New locations where the system records are kept have been added to include the three locations where the TeleFile records (records about returns filed by telephone) are maintained. These include: the Cincinnati Service Center, 201 West River Center Blvd., Covington, KY 41019; the Memphis Service Center, 3131 Democrat Road, Memphis, TN 38118; and, the Ogden Service Center, 1160 West 1200 South Street, Ogden, UT 84201.

A "Purpose(s)" data element is also being added to the system of records.

The routine use is being altered to read: Disclosure of returns and return information may be made as provided by 26 U.S.C. 6103, and for meeting the requirements of 26 U.S.C. 3406. 26 U.S.C. 3406 provides, in part, that the Secretary of the Treasury notify a payor that the TIN (Taxpayer Identification Number) furnished by the payee is incorrect.

The alterations to the existing system of records are published below. The system notice for Treasury/IRS 24.046 was published in its entirety most recently in the **Federal Register** Vol. 60, page 56788, November 9, 1995.

Dated: August 14, 1997.

**Alex Rodriguez,**

*Deputy Assistant Secretary (Administration)*

**Treasury/IRS 24.046**

**SYSTEM NAME:**

Description of change: Delete former title. Add new title: "Business Master File (BMF), Taxpayer Service—Treasury/IRS"

**SYSTEM LOCATION:**

Description of change: After Martinsburg Computing Center, Martinsburg, West Virginia 25401, replace the "." with a ";" and add: "Cincinnati Service Center, 201 West River Center Blvd., Covington, KY 41019; Memphis Service Center, 3131 Democrat Road, Memphis, TN 38118; and Ogden Service Center, 1160 West 1200 South Street, Ogden, UT 84201."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Description of change: Replace the current statement with the following: "Persons in a sole proprietary role who file business tax returns, including Employer's Quarterly Federal Tax Returns (Form 941), Excise Tax Returns (Form 720), Wagering Returns (Forms 11C and 730), Highway Use Returns (Form 2290), and U.S. Fiduciary Returns (Form 1041) and Estate and Gift Taxes (Forms 706, 706NA, and 709). The latter can be individuals not in a sole proprietorship role."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Description of change: Add the following statement at the end of the category: "The Employer Identification Number (EIN)/Name Control file which contains EINs and the associated IRS name controls."

**PURPOSE(S):**

To increase the efficiency of tax administration, the Service maintains magnetic media records of tax returns filed by business taxpayers, and payments and assessments made to the accounts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Description of change: Replace the current language with the following:"Disclosure of returns and return information may be made as provided by 26 U.S.C. 6103, and for meeting the requirements of 26 U.S.C. 3406. 26 U.S.C. 3406 provides, in part, that the Secretary of the Treasury notify a payor that the TIN (Taxpayer Identification Number) furnished by the payee is incorrect."

**SYSTEM MANAGER(S) AND ADDRESS:**

Description of change: Remove current statement and add: "Official prescribing policies and practices—Chief Taxpayer Service. Officials maintaining the system—Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)"

[FR Doc. 97–22430 Filed 8–22–97; 8:45 am]

BILLING CODE: 4810–30–F

# Corrections

Federal Register
Vol. 62, No. 164
Monday, August 25, 1997

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 ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER 97-3851-000]**

### Virginia Electric and Power Company; Notice of Filing

*Correction*

In notice document 97–21950 appearing on page 44121 in the issue of Tuesday, August 19, 1997, make the follow correction:

On page 44121, in the second column, the Docket No. should be as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2545-059]**

### The Washington Water Power Co.; Notice of Availability of Final Environmental Assessment

*Correction*

In notice document 97–21758 appearing on page 44006 in the issue of Monday, August 18, 1997, make the following correction:

On page 44006, in the first column, in the second document, the Project No. should as set forth above.

BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-38873; File SR-NYSE-97-15]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to Requirements for Notifications by Member Organizations of Participation in Distributions

*Correction*

In notice document 97–20170 beginning on page 41118 in the issue of Thursday, July 31, 1997, make the following correction:

On page 41119, at the end of the document, in the first column, the authorizing signature should read:

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 135

**[Docket No. 28743; Amendment No. 135-70]**

**RIN 2120-AG22**

### Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules

*Correction*

In rule document 97–20641 beginning on page 42364 in the issue of Wednesday, August 6, 1997, make the following correction:

On page 42364, in the first column, in the first line of the **DATES** section "May 3, 1998" should read "May 4, 1998".

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federal register

Monday
August 25, 1997

Part II

# Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 304, et al.

Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs; Final Rule

9 CFR Part 303, et al.

Sanitation Requirements for Official Meat and Poultry Establishments; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 308, 317, 318, 319 and 381

[Docket No. 95–032F]

RIN 0583–AB93

# Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by removing the requirements for prior approval by FSIS of establishment drawings, specifications, and equipment used in official establishments. Requirements involving the comparison of blueprints and specifications with actual facilities and equipment will end, affording industry the flexibility to design facilities and equipment in the manner they deem best to maintain a sanitary environment for food production. FSIS will continue to verify through inspection that sanitation requirements are being met. FSIS is also ending its prior approval of most establishment-operated partial quality control programs, which are used by establishments to control certain kinds of food processing and product characteristics. This change will enable establishments to develop and implement quality control programs without first having to receive permission from FSIS to do so. This action is being taken as part of FSIS's regulatory reform effort to improve FSIS's meat and poultry food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, and remove unnecessary regulatory burdens on inspected establishments.

**DATES:** *Effective Date:* September 24, 1997.

*Comments:* Comments on the guidance material published as Appendices A and B of this document must be received by October 24, 1997.

**ADDRESSES:** Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95–032F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 Twelfth Street, S.W., Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, FSIS, Room 402 Annex Building, Washington, DC 20250–3700; (202) 205–0699.

**SUPPLEMENTARY INFORMATION:**

## Background

The Federal meat and poultry products inspection regulations currently require establishments applying for inspection to submit to FSIS multiple sets of drawings and specifications of the facilities for approval before inspection can be granted (9 CFR 304.2, 381.19). The regulations require plans to be submitted to the Agency for approval before any remodeling of facilities (9 CFR 308.2, 381.19(e)). The regulations also require approval by FSIS of equipment and utensils proposed for use in preparing edible product or product ingredients in official establishments (9 CFR 308.5, 381.53). Further, the regulations require Agency approval of partial quality control programs before establishments can use them for control of food processing or for other uses (318.4 (d)–(g), 381.145 (d)–(g)).

FSIS proposed in the May 2, 1996, **Federal Register** (61 FR 19578) to amend these regulations to eliminate requirements for FSIS prior approval. The Agency also proposed a minimum standard for the design of PQC programs that is comparable to the standard for programs the Agency has approved. For the reasons given in the preamble to the proposal and in this final rule, FSIS is adopting the proposed amendments with some additional changes occasioned by FSIS's review of the proposed rule and the comments on that proposal.

## Comments

FSIS received 27 comments during the public comment period that ended September 9, 1996. Five were from industry consultants, seven from equipment manufacturers and engineering firms, eight from food companies, four from trade associations, one from a law firm representing packers and equipment manufacturers, and two from State departments of agriculture. Twelve commenters expressed qualified support for eliminating prior approval of equipment and facility blueprints, thirteen favored keeping the present approval system, and two suggested alternatives. All 13 comments received on the specific issue of eliminating PQC prior approvals supported the proposed change.

In addition to the comments submitted on the May 2, 1996, proposal, five comments supporting the elimination of prior approvals were submitted in response to the Agency's December 29, 1995, advance notice of proposed rulemaking "FSIS Agenda for Change: Regulatory Review." Four of the five comments were from persons who also commented on the May 2 proposal.

The following summarizes the comments on the proposal and Agency responses by major topic addressed.

### *Circuit Supervisor and Inspection Decisions*

Most commenters, whether favoring or opposing the proposal, expressed concern that eliminating prior approvals of facilities and equipment would leave establishments without documented approvals with which to counter adverse judgments by circuit supervisors during walkthroughs conducted before the granting of inspection or by field inspectors during daily establishment operations. The commenters feared that conflicts arising over decisions by such Agency personnel could delay production and otherwise burden establishments. Ten commenters opposed the proposal for this reason. Six others, though favoring the proposal, had the same concern and thought the Agency should take steps to prevent or minimize any disruptions arising from decisions made by local Agency personnel.

These commenters tended to assume that FSIS inspection will not change in conjunction with the regulatory reforms now taking place. FSIS disagrees. FSIS inspection roles will change significantly under the recently promulgated final rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806; July 23, 1996). Under this rule, FSIS personnel will verify the effectiveness of processes and process controls designed to ensure food safety. FSIS is preparing the inspection workforce to oversee the safety of meat and poultry products under this new HACCP-oriented inspection. FSIS personnel will focus on an establishment's ongoing compliance with HACCP-consistent requirements. Inspectors will carry out verification activities such as reviewing establishment monitoring records for a process, reviewing records for a production lot, directly observing critical control point controls conducted by establishment employees, collecting samples for FSIS laboratory analysis,

and verifying establishment verification activities for a process.

Inspection findings that affect facilities or equipment will be made in the context of such verification activities. Inspectors will retain the authority to reject facilities or equipment wherever appropriate and warranted by the circumstances. Establishments will have the responsibility to take corrective action when they discover process deviations while operating their HACCP systems. Proper design and implementation of sanitation standard operating procedures (SOP's) and the HACCP system will minimize any differences of opinion with Agency personnel that may occur.

*Provision of Guidance Material, Transition to HACCP*

A number of commenters (8) who favored the proposal thought that the Agency should make guidance materials on facilities and equipment available to inspectors and establishments, especially to small establishments. These commenters stated that the guidance materials, including a revised Agriculture Handbook 570, *U.S. Inspected Meat and Poultry Packing Plants: A Guide to Construction and Layout,* and equipment acceptability standards, would help maintain uniformity and consistency in inspection decisions and would also be of use to small establishments. One commenter thought there should be periodic updates to Handbook 570. Some commenters stressed that the Agency should emphasize to inspectors that the guidance documents are not rules and regulations, but are intended to illustrate basic principles to be applied in a variety of situations.

As explained in the proposal, FSIS is preserving the final edition of Agriculture Handbook 570 and the general guidance material in MPI–2, *Accepted Meat and Poultry Equipment,* for reference. This guidance material is appended to this document as Appendix A. The Agency agrees with the commenters that this guidance material should not be interpreted as a set of regulations, but as a statement of basic principles with illustrative examples. The specific application of these principles will depend, in part, on the establishment's implementation of its sanitation standard operating procedures and its HACCP plan. The Agency also plans to issue a final list of approved equipment, reflecting FSIS decisions through November 1996. Appendix A is a final draft on which the Agency will accept comments for 60 days. Comments on whether the material is clear and useful will be especially helpful in finalizing the material.

*Effect on Small Companies*

A few commenters (3) thought that eliminating prior approvals would be harmful to small companies that are unable to hire experts in food processing facilities or equipment to assist them in complying with regulatory requirements.

As explained above, FSIS has prepared technical guidance material on facilities and equipment that should be especially useful to small establishments. The Agency will continue to maintain a small staff of experts at Washington headquarters to monitor developments in food technology and disseminate advice and materials concerning applications of the technology. The Agency also plans to make the technical guidance material it develops available to the public in electronic format.

*Prestige of USDA Acceptance*

One commenter thought that, with the ending of the FSIS acceptance program for equipment, U.S. manufacturers would suffer a disadvantage in international markets for food processing equipment. The commenter stated that equipment manufacturers were previously able to trade on the value of USDA acceptance of their products for use in federally inspected plants.

Although FSIS appreciates the fact that its decisions on meat and poultry slaughtering and processing equipment are valued, the acceptance program was never intended for equipment market promotion. Its purpose was to help ensure that meat and poultry establishments would operate in a safe, sanitary manner, producing and shipping only wholesome, unadulterated meat and poultry products.

*Limited Value of Prior Approval*

One commenter agreed and another disagreed with the Agency's contention that an initial determination that meat and poultry facilities and equipment meet Agency requirements is of limited value. Prior approval does not guarantee that establishments will continuously operate facilities and equipment in a safe and sanitary manner. FSIS's position, as previously stated, is that effective sanitation SOP's and HACCP systems will meet the same objectives as prior approvals.

*Third-Party Certifications*

Several commenters suggested the use of third-party certifications of facilities and equipment. One commenter favoring the proposal suggested that FSIS consider the voluntary use by establishments of third-party assessment and registration programs to ensure the development and implementation of effective sanitation and HACCP programs.

FSIS agrees with the commenter that third-party programs can make a useful contribution to the effort of developing and implementing sanitation SOP's and HACCP plans. The Agency, realizing that some establishments will be unable to avail themselves of these services and that many will not need to, is not requiring the use of such services. Also, the Agency does not intend to formally recognize or accredit such services. However, FSIS agrees that third-party certification services may be advantageous to many establishments and would support an industry initiative in this area. An example of such a third-party certification service is the 3–A Sanitary Standards Committee, which conducts a certification program for equipment used in dairy and egg products processing establishments.

*Number of Blueprint Submissions and Evaluation*

One commenter disputed the number of blueprint submissions to the Agency during fiscal year 1994 (2,100, versus the Agency's estimate of 2,900) and the Agency's attribution of most rejections to paperwork errors. The commenter asserted that most rejections were attributable to deficiencies that could affect food safety. The commenter also suggested that because the proposal was based, in part, on the Agency's incorrect estimate of the number of blueprints it evaluated and the reasons for returns and rejections of the blueprints, the basis for the proposal was faulty, and that, for this reason, the proposal ought to be withdrawn.

FSIS's estimate of the number of submissions at about 2,900 for fiscal year 1994 was derived from information in a blueprint evaluation database that was intended to show trends in workflow through the Washington review staff rather than absolute numbers of submissions. In fiscal year 1994, the Agency also maintained a separate count of returns of blueprints to their originators. Some blueprint sets go back and forth between the Agency and the originating establishment several times before they are approved. The Agency used a sample of blueprint evaluation records from the database,

adjusted for multiple returns, in estimating the number of submissions it handled.

The commenter's count may have been based, in part, on internal Agency reports. The data in those reports is comparable to the data used by the Agency in arriving at its estimate. FSIS considers the commenter's count as a reasonable lower-bound estimate of the number of submissions and is using it for the purpose of assessing the impact of this rule.

However, FSIS disagrees with the commenter's belief that most blueprint rejections were the result of factors affecting food safety. During periods of high workload, the Agency's Washington staff has tended to return a higher proportion of blueprint sets with administrative errors to the originating establishments and request resubmission. During periods of lower workload, the staff has been able to telephone establishments, offer advice relating to the compatibility of blueprints with guidelines, and receive corrections of administrative errors by fax. The percentage of returns to correct specifications that have implications for food safety was somewhat higher in periods of lower workload than in high-workload periods. Most recently, it has been the policy of the blueprint review staff to focus strictly on regulatory compliance—that is, on checking for specifications required by the regulations—rather than on compatibility with guidelines. As a result, the percentage of blueprint returns attributable to paperwork errors has been higher than in the past.

The estimate of blueprint submissions and rejections was used to conduct a regulatory impact assessment. Moreover, the Agency's estimate of impact is only a part of the basis for the rule. As stated in the preamble to the proposal, there are several other important reasons for the rule. First, it is important to note that the Federal Meat Inspection Act and the Poultry Products Inspection Act do not require prior approval of facilities, equipment, and quality control programs. More importantly, prior approvals are limited in scope because they apply only to certain aspects of establishment operations and in time because they are given only once. The establishment is and has always been responsible for maintaining sanitary facilities and equipment every day it operates. Also, prior approval is a feature of the traditional command-and-control approach to regulation that can be an obstacle and deterrent to innovation. Eliminating prior approvals is consistent with the new regulatory requirements for establishment-operated sanitation SOP's and HACCP systems, under which the establishments will fulfill their responsibility for determining and implementing process controls that will assure food safety. Under these new requirements, prior approval is an inappropriate allocation of responsibility between the Agency and establishments.

*Enforcement, Dispute Resolution, and Appeals*

A number of commenters (4) asked what recourse establishments would have if FSIS took action against or refused to allow the use of equipment or facilities that had not previously been approved by FSIS. Commenters asked whether appeal procedures would be provided or whether another form of dispute resolution would be available to establishments if the proposal were adopted.

FSIS understands the concern and is developing procedures for resolving issues such as these which may arise under the HACCP-based inspection system. The Agency emphasizes, however, that under the new program, inspectors will not be evaluating equipment and facilities directly. Rather, inspectors will evaluate the operational effectiveness of facilities and equipment in preventing direct product contamination and other hazards.

FSIS is currently revising its rules of practice and will include procedures for dispute resolution and appeals of FSIS decisions. Until those rules of practice become effective, current enforcement and appeal procedures will continue to be followed.

*Partial Quality Control Programs*

As mentioned above, 13 comments favored the elimination of prior approval of establishment-operated PQC programs, but most were accompanied by questions and suggestions concerning the Agency's policy on PQC approvals.

*Continued Prior Approval of Certain Quality Control Programs*

Three commenters asked why the Agency was eliminating prior approval for certain PQC programs, but retaining prior approval requirements for other PQC programs. One commenter noted that the proposal did not address prior approval of Total Quality Control programs.

Although eliminating most prior approvals, FSIS is retaining certain specific regulatory provisions for prior approval of PQC programs. These include programs associated with certain slaughter inspection systems and with food irradiation facilities. Also, this final rule does not eliminate prior approval of TQC programs. The Agency plans to deal with these issues during the next few months in rulemakings intended to address the remaining prior approval requirements for PQC and TQC.

*Specific Requirements for PQC Programs*

A number of commenters questioned the requirements that PQC programs would have to continue to meet. Two commenters wondered why the Agency was prescribing design criteria for PQC programs, including the required elements and minimal statistical confidence, when they were eliminating prior approval. Another commenter thought that the National Institute of Standards and Technology (NIST) Handbook 133, concerning net weight, should be amended to eliminate specific references to approved PQC programs.

The PQC program design criteria set forth in the regulations are consistent with those currently observed by the industry. The Agency proposed the requirements, including the 85-percent statistical confidence criterion, to provide the industry with a set of minimum standards for PQC programs. A sampling plan should be consistent with the principles of statistical process control and the proposed requirement included such a plan. Nevertheless, the Agency agrees that a precise sampling plan does not have to be set out in the regulations. The Agency also agrees that the proposed specifications relating to the minimum confidence level, individual sample means, and sublot means are too prescriptive. Accordingly, these specifications are not being adopted in this final rule.

Further, establishments are not required to include all the features presented in proposed §§ 318.4(2)(ii) and 381.145(2)(ii) in its individual PQC programs. The final rule only requires that a PQC program include those elements that are "appropriate for the product, operation, or part of an operation which the program concerns." The final rule also requires that generally recognized statistical process control procedures be used to determine process control. However, the final rule is worded to accommodate control procedures that are not statistically based or that do not have measurable control limits, such as the in-plant control procedures for grade-labeled product.

As to NIST Handbook 133, FSIS does not see a need to amend the Handbook at this time. The Handbook states that

data generated by USDA-approved PQC programs can be used to substantiate lot compliance with net weight requirements. Even without prior approval by FSIS, a PQC program meeting the requirements of this final rule could generate data appropriate for determining product compliance with net weight requirements. Such data will be recognized and checked by FSIS inspection personnel just as data generated by prior-approved PQC programs have been until now.

In order to facilitate establishment development of PQC programs that meet the requirements of this final rule, the Agency has developed guidance material which includes the criteria it used to determine whether or not PQC's were acceptable. The guidance material, which is included as Appendix B, may be used by establishments at their discretion.

Appendix B, as with Appendix A, is a final draft on which the Agency will accept comments for 60 days. Comments on whether the material is clear and useful to establishments will be especially helpful in making final revisions to the Appendix.

Upon publication of this final rule, FSIS will revise Agency directives and other documents referring to PQC's. The category of "conditional" PQC's in these documents will be eliminated and the categories "mandatory" and "voluntary" will remain. The "mandatory" category will be abolished once all regulations requiring Agency-approved PQC's for certain processes have been amended.

*Effect of Mandatory HACCP on PQC Programs With Public Health Implications*

Two industry commenters wanted to know what effect the HACCP requirements would have on existing and future PQC programs, which include measures relating to public health or safety protection. Although this final rule eliminates the requirement for prior approval of most PQC programs, PQC programs remain an option for controlling certain processes. As HACCP is implemented in an establishment, safety-related PQC programs will most likely be incorporated into the establishment's HACCP plan. As HACCP plans are implemented throughout the meat and poultry industry, public health-related PQC programs will no longer be needed. Establishments will, of course, continue to be able to develop and use PQC programs that control "economic" factors.

A State government suggested that the Agency continue prior approval of such PQC programs. FSIS disagrees. The Agency's position is that such control programs should be implemented voluntarily, at the establishment's discretion.

*Third-Party Certification of PQC Programs*

One commenter suggested that FSIS make use of third-party certification services for PQC programs.

As stated above, third-party certification services may be useful and advantageous to many establishments, and FSIS would support industry initiatives in this regard. However, the Agency does not plan to require third-party certification or to officially recognize, accredit, or oversee their operations.

*Export Requirements*

One commenter noted that some foreign countries require product exported to them from U.S. establishments to have been processed under approved PQC programs, and requested that the foreign requirements be changed to accord with the new U.S. regulations.

However, FSIS has no direct control over the requirements of foreign governments. Establishments must abide by the requirements of the countries to which they export. Since FSIS is no longer approving PQC programs, if a foreign government requires a U.S. establishment to process product exported to that government's territory under an approved PQC program, then the establishment should obtain approval for the program from that government.

**The Final Rule**

FSIS is adopting the provisions in the proposal in essentially the same form as proposed, but with some technical changes. In §§ 318.4(d) and 381.145(d), concerning PQC programs, the phrase "is required to have" replaces "is using" for greater consistency with the intent to provide flexibility to establishments and reduce regulatory paperwork burdens associated with voluntary PQC's. As mentioned, some of the PQC program design criteria in proposed §§ 318.4(d)(2)(ii) and 381.145(d)(2)(ii) are not being adopted. Also, §§ 318.4(d)(2)(ii) and 381.145(d)(2)(ii) are worded to accommodate procedures that do not have measurable limits, as well as statistically based PQC's.

Additionally, FSIS is making certain technical corrections in this final rule, which are occasioned by FSIS's review of the proposed rule and the comments on that proposal. The wording of amended §§ 317.21, 318.19(e) and 381.121d is changed somewhat from the proposed wording to clarify that certain requirements for quality control will continue even though the prior approval requirements for PQC programs are removed. The proposal did not include proposed amendments eliminating the prior-approval requirement for blueprints of import inspection establishments or of establishments operating under State meat or poultry inspection programs that are "at least equal to" the Federal program. The revised 9 CFR 327.6(d), 331.3 and 381.222 eliminate these prior-approval requirements. States may continue to require establishments to submit blueprints for approval as a condition of receiving inspection, but because FSIS is eliminating its prior approval programs, the Agency will no longer consider prior approval of blueprints to be a necessary feature of an "at least equal" inspection program.

Also, FSIS inadvertently omitted changes, consistent with the intent of this rulemaking, to some sections of the regulations that refer to PQC prior approvals. These sections include 9 CFR 319.105, on the processing of cured ham products and 9 CFR 318.308 and 381.308, on the processing of canned foods. The final rule amends these sections of the regulations to eliminate the references to PQC prior approvals.

**Relationship to Sanitation SOP's and HACCP**

Beginning on the effective date of this final rule, establishments will no longer be required to submit drawings and specifications of facilities to FSIS for approval before beginning inspected activities or before remodeling facilities. They will no longer be required to use only FSIS-approved utensils and models of equipment.

Establishment operators must be aware of two things, however. First, in carrying out sanitation SOP's required by the Pathogen Reduction/HACCP regulations, if corrective action is necessary to maintain or restore sanitary conditions, an establishment may have to repair or replace facilities or equipment. FSIS inspectors will be verifying the establishment's operation of its sanitation SOP's. If, during verification activities, inspectors find that the SOP's are not being effectively implemented, they will have the full range of compliance measures available, including the rejection of equipment and areas of the establishment. It will be the responsibility of the establishment to take action with respect to any equipment or facilities that may be causing a sanitary hazard.

Second, in conducting the hazard analyses required to develop its HACCP plan, an establishment must determine all factors that may contribute to the emergence of hazards and the measures necessary to prevent or minimize those hazards. This means that the establishment's facilities and equipment must be designed to permit the process governed by the HACCP plan to be carried out. The facilities and equipment must be capable of meeting the applicable processing requirements of a product, must be cleanable, and must not become a source of hazards to the product. For example, facilities and equipment should be maintained so that product is not exposed to physical hazards such as paint chips, rust particles, or loose machine parts.

Establishments will be responsible for consulting with equipment manufacturers as necessary to complete their hazard analyses and identify appropriate critical control points (CCP's) while developing their HACCP plans. Establishments will be expected to take appropriate corrective actions whenever they find deviations from process critical limits while operating their HACCP systems. The actions necessary to correct a problem may, at times, require maintenance, repair, or replacement of equipment or facilities.

FSIS personnel will verify that establishments are effectively operating their HACCP systems. If FSIS finds a pattern of recurring hazards to product caused by facilities and equipment, the Agency has, and will exercise where appropriate, the authority to take action on product, equipment, or facilities. In those situations where FSIS finds a pattern of recurring hazards to product, it will be indicated that the HACCP plan is inadequate and the plan may have to be redesigned and revalidated. Improving the establishment's facilities and equipment could well be among the steps necessary to redesign and revalidate the HACCP plan.

FSIS findings will not be directed primarily at the acceptability of facilities and equipment *per se*, but at the functioning of the HACCP plan in operation. In other words, if hazards to product are not being prevented or critical control points are failing, the failure may be the result of inadequate facilities or equipment and the establishment will be required to correct the problem.

**Equipment and Utensils**

FSIS will no longer evaluate equipment or utensils for acceptance. As mentioned earlier in this document, the final edition of MPI–2, *Accepted Meat and Poultry Equipment*, is being published for reference purposes. Adequate sanitary design of equipment will be ensured through establishment implementation of SSOP's and HACCP plans.

Equipment and utensils must continue to meet the general standard that they are of a material and construction that will facilitate thorough cleaning and cleanliness in preparing edible product and must not interfere with or impede inspection procedures. (9 CFR 308.5(a), 308.15, 381.53(a)(1).) FSIS has authority to prevent the use of equipment or facilities that pose a threat to public health or interfere with inspection. FSIS must be notified in advance of any changes to facilities or equipment that may interfere with or force changes to FSIS's inspection operations.

**PQC Programs**

With respect to PQC programs, under this final rule inspectors will verify that establishments have written PQC programs on file, with data and information available to the inspectors, and that the process limits prescribed by the programs are being met. The establishments will be responsible for developing PQC programs that meet the regulatory requirements but there is no requirement for the programs to be approved in advance of their use. The establishments may seek advice from the Agency concerning requirements for such programs. As mentioned previously, draft guidance material on PQC programs is provided in Appendix B to this document.

**Disposition of FSIS Files on Establishment Facilities**

In concluding its prior approval activity for establishment drawings and specifications, FSIS will archive or otherwise dispose of the files of its facilities review staff. Establishment drawings and specifications and files, many of which contain proprietary information, will be destroyed with appropriate security under official supervision.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Executive Order 12866 and Effect on Small Entities**

FSIS is eliminating prior approval requirements for establishment drawings and specifications, equipment, and certain partial quality control programs. Concurrently with this final rule, FSIS is restructuring inspection activities to focus more attention on the ability of establishments to maintain a sanitary environment. These actions, in addition to implementation of the sanitation standard operating procedures required by the Pathogen Reduction/HACCP rule, will provide the industry the flexibility for creating and maintaining a sanitary working environment without prescriptive command-and-control requirements.

Removing these requirements affects establishments subject to official inspection, firms producing and selling equipment currently subject to prior approval, firms providing expediting services to businesses seeking prior approval, and consumers. The final rule will reduce demands on FSIS resources which can be redirected to functions more critical to assuring food safety.

FSIS considered a number of alternatives, including that of making no rule changes, before adopting this final rule. The Agency rejected the alternative of no rule changes because not changing the regulations would leave in place a prescriptive regulatory regime for equipment, facilities, and processes that conflicts in a material way with the objectives of the Pathogen Reduction/ HACCP final rule. Under HACCP, establishments will assume responsibility for sanitation and for building science-based, preventive process controls into the food production system to reduce or eliminate food safety hazards. This will include taking responsibility for ensuring that facilities, equipment, and processes conform with sound sanitation principles and food safety performance standards. The existing requirements can also impede the ability of establishment management to implement, on a timely basis, better and more innovative food safety strategies.

Alternatives to facilities and equipment prior approvals that FSIS considered included development by FSIS of detailed standards to be published in booklets with periodic updates, recognizing industry organizations as prior approval authorities, and establishing general performance standards similar to FDA-recognized good manufacturing practices. Another alternative which would have provided prior approval

services on a voluntary, user-fee basis, was also considered.

FSIS rejected the alternative of publishing booklets containing detailed facility and equipment standards because, although establishments would assume responsibility for determining whether their facilities and equipment comply with the standards, establishments would remain without flexibility to implement innovative technologies that appear to depart from the written standards. It is also likely that, under this alternative, the Agency would continue to exercise discretionary prior approval authority over the introduction of new food safety technologies. Moreover, the Agency's inspection of facilities and equipment for compliance with the published standards would divert resources needed to verify SSOP's and HACCP systems. As mentioned above, however, FSIS is publishing draft guidance material on facilities and equipment as Appendix A of this document.

FSIS also rejected the alternative of officially recognizing industry organizations as prior-approval authorities for facilities and equipment. As mentioned earlier in this document, although such services may be beneficial to some establishments, many will not need and some will be unable to use such services. Thus, FSIS does not intend to provide official accreditation or certification of such services. The Agency's verification of SSOP and HACCP systems is intended to be its primary means for determining the adequacy of establishment food safety protective measures, including those measures that depend on well designed and maintained facilities and equipment.

FSIS also rejected the alternative of continuing its prior approval of facilities and equipment on a user-fee basis. This alternative had essentially the same drawbacks as the alternative of no rule changes. It would not have appropriately separated the roles of the establishment and the Agency. It would have perpetuated adherence to prescriptive design standards rather than setting food-safety performance standards for establishments to achieve. Finally, this alternative would have continued to pose the same regulatory obstacles to innovation as the current system.

FSIS chose the option of eliminating prior approval requirements for facilities and equipment, while maintaining the general food safety standards in the existing regulations. This action will remove regulatory obstacles to innovation and command-and-control requirements inconsistent with the objectives of the Pathogen Reduction/HACCP final rule and the Agency's food safety regulatory strategy and will yield immediate and near-term benefits. As stated in its December 29, 1995, advance notice of proposed rulemaking, the Agency is considering replacement of more of its detailed regulatory requirements with performance standards. Such changes will be addressed in future documents.

The alternatives to PQC prior approvals were market sampling of finished products, mandating additional in-plant controls, sampling finished products for chemical analysis, and general requirements and standards for PQC programs.

FSIS regards market sampling as a potentially useful tool for enforcing the statutes prohibiting commerce in adulterated and misbranded meat and poultry products and for checking the effectiveness of establishment process controls. Sampling and testing products in the marketplace can also help in addressing food safety hazards arising in post-processing distribution of meat and poultry products. However, the Agency did not see a need for specific regulatory requirements concerning such sampling.

The alternative of mandating additional in-plant controls in lieu of PQC prior approvals would result in prescriptive, command-and-control requirements and restrict the scope for establishment food safety innovations, thereby defeating the purpose of this rulemaking.

In-plant sampling of finished products for chemical analysis also is a potential tool that FSIS has used to verify the effectiveness of in-plant controls. The Agency saw no need, however, for a specific regulatory mandate to conduct such sampling and analysis.

FSIS chose the option of providing general requirements for PQC programs that establishments would have to meet. This option seemed to provide establishments with the most flexibility in implementing PQC programs and a standard applicable to a range of processes.

**Benefits of the Rule**

Approximately 6,200 federally inspected meat and poultry establishments will no longer be required to submit blueprints, drawings, and specifications to FSIS for prior review and approval. FSIS reviewed an estimated 2,100 to 2,900 submissions in FY 1994. The range of the estimate is attributable to the fact that an indeterminate number of blueprints were returned to establishments and resubmitted to the Agency, some several times, before being accepted. The cost of receiving FSIS approval for drawings and specifications and changes they represent includes the administrative, mailing, and labor costs associated with preparing the required Agency forms. The labor cost is estimated at 30 minutes for each submission. Assuming an hourly wage or per-hour salary of $20–$25 for each person submitting blueprints and specifications and the FSIS form, the annual cost to the industry for making these submissions is in the range of $21,000 to $40,000. This figure is an estimate of the savings accruing to industry by removing the requirement for prior approval.

As many as 1,500 establishments per year submit for approval PQC programs or amendments to PQC programs. FSIS receives a total of 1,900 submissions each year. A typical PQC program, prepared according to FSIS guidelines, can be written up in about 4 hours by an individual earning $20 to $25 per hour. Removing the requirement for prior approval of PQC plans is estimated to save the industry $150,000 to $190,000 per year.

FSIS receives approximately 2,500 submissions for approval of equipment each year. The cost of these applications generally falls on equipment manufacturers rather than the meat and poultry firms subject to inspection, although a few meat and poultry establishments make some of their own equipment or equipment modifications. FSIS estimates that the costs to manufacturers of applying for equipment approval are comparable to the costs to establishments of submitting blueprint and establishment specification approvals. Based on 30 minutes per submission, a labor cost of $20–$25 per hour, and 2,500 submissions annually, the annual cost savings from removing the prior approval requirement for equipment will be in the range of $25,000 to $32,500. In addition, approximately 650 applications for approval are contingent on in-plant trials, which involve some added costs to manufacturers and meat and poultry establishments. The Agency has no estimate of these costs to include in this analysis.

The elimination of blueprint prior approvals will remove a source of income for approximately 20 small firms, known as "expediters," that represent official establishments for the purpose of labeling and blueprint approval. On the basis of information submitted during the comment period, the Agency understands that approximately 35 percent (or about 735 to 1,015) of the annual blueprint submissions to the Agency are made

using expediters. The estimated annual total value of blueprint expediting is about $300,000 to $400,000 for the companies involved. Since the income lost to the expediters will be transferred to meat and poultry firms, it is not a cost of the final rule.

The benefits directly resulting from the elimination of prior approval requirements in accordance with this rulemaking are indicated in Table 1. There also will be additional, unquantifiable benefits resulting from fewer demands on establishment management, greater incentives to adopt innovative practices, and the enhanced ability to make changes quickly, which the prior approval system and its inherent delays inhibit. Also, the delays inherent in the prior approval process, which can be translated into lost production time, will be eliminated.

Moreover, it is unlikely that any inspection finding of adulterated product or insanitary conditions under the amended regulations will result in increased costs to the industry for rebuilding or remodeling facilities. Establishments planning substantial investments in new construction typically consult with local authorities and experts with up-to-date knowledge of food establishment construction before beginning major projects.

In addition to the benefits to firms from eliminating these prior approval requirements, FSIS expects to benefit by reallocating about $2.3 million to high priority food safety needs. Currently, the Agency allocates about 15 staff-years ($750,000) to reviews of equipment, 20 staff-years (about $1 million) to reviews of drawings and specifications, and 11 staff-years ($550,000) to review and approval of PQC programs. The true social benefits to be expected are the improvements in food safety that will flow from reallocating these resources to more important food safety-related tasks.

**Costs of the Rule**

As is currently the practice, establishments will continue to be required to take corrective action or cease operations if any product has been adulterated or prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health, because of deficient facilities and equipment. A finding of product adulteration or insanitary conditions will entail corrective action which, in some cases, may involve reconstruction, remodeling, or redesign of facilities and equipment. However, it is unlikely that this rule will increase the level of inspection findings that result in such reconstruction, remodeling, or redesign primarily because, as mentioned, most establishments consult with knowledgeable authorities before major construction or installations. Also, proper operation of sanitation SOP's and HACCP systems will reduce the occurrence of adverse inspection findings.

Under existing regulatory requirements, facility and equipment plans submitted to FSIS for prior approval were rejected due either to errors in paperwork or to deviation from specific design criteria developed by FSIS. Under the final rule, establishments will be permitted to initiate and complete construction or introduce new equipment without submitting any paperwork to FSIS. In addition, FSIS will eliminate design-related criteria currently utilized to evaluate the acceptability of facilities and equipment. Establishments will not have to incur costs for reconstruction, remodeling, and redesign because the facility or piece of equipment does not match a specified design criterion, blueprint, or equipment specification.

In the absence of prior approval, FSIS will focus inspection on whether establishments are maintaining a sanitary environment. Under this final rule and the Pathogen Reduction/HACCP regulations, establishments will assume greater control over their production practices to ensure that a sanitary environment is maintained. Currently, many establishments utilize the services of architects, engineers, and other experts to design facilities and equipment for use in meat and poultry establishments. Under the regulations requiring prior approval, these experts ensured, among other things, that FSIS design specifications were met. Without prior approval, establishments may require these experts to provide more information on the procedures necessary for maintaining facilities and equipment in a sanitary condition, which could increase the costs for these services. However, this is consistent with the need for the industry to assume greater responsibility for its operations. Any cost increases for these services will be commensurate with the transfer of responsibility from FSIS to the industry, and will not be a social cost attributable to the rule.

TABLE 1.—BENEFITS TO FIRMS FROM ELIMINATING PRIOR APPROVAL REQUIREMENTS

| Action | Firms with more than 500 employees | Firms with fewer than 500 employees | All firms | Information collection burden reduction—all firms (in hours) |
|---|---|---|---|---|
| Remove blueprint and specification approval | $1,260–2,400 | $19,740–37,600 | $21,000–40,000 | 701 |
| Remove equipment approval | 2,500–3,250 | 22,500–29,250 | 25,000–32,500 | 2,990 |
| Remove PQC approval | 9,000–11,400 | 141,000–178,600 | 150,000–190,000 | 540 |
| Total | 12,760–17,050 | 183,240–245,450 | 196,000–262,500 | 4,321 |

**Regulatory Flexibility Assessment**

The Administrator has determined that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–12), this final rule will not have a significant economic impact on a substantial number of small entities. The entities affected by this final rule are inspected meat and poultry establishments, equipment suppliers, and companies representing official establishments to the Agency for the purpose of obtaining blueprint approvals. Most of these are small entities.

The final rule is expected to have a beneficial effect on small and large entities, on both those regulated under the FMIA and PPIA and some that are not regulated under the inspection laws but which are affected by the Agency's review of their products, e.g., suppliers of equipment used in inspected meat and poultry establishments.

There are about 5,800 federally inspected small establishments. In this analysis, FSIS is using the Small Business Administration (SBA) business size standards (13 CFR 121.201) that apply to meat packing establishments, establishments that produce sausages and other prepared meats, and poultry slaughtering and processing

establishments. A small establishment in any of these categories is considered to be one with 500 or fewer employees. Under current regulations, all establishments are required, as a condition of receiving inspection, to submit blueprints, drawings, and specifications of new or remodeled facilities to FSIS for review and approval. Under this final rule, establishments will continue to incur the cost of preparing blueprints and specifications for construction and major installations. However, they will no longer bear the cost of submitting these drawings and specifications to the Agency for review because the requirement to do so is being eliminated.

The savings to be obtained by eliminating FSIS approval for drawings and specifications and the changes they represent includes the administrative and mailing costs and the time (resources) required to fill out the required Agency form ("Submission and Approval of Plans and Specifications," FSIS–5200–S), which is estimated at 30 minutes each submission. As mentioned above, the annual savings to the meat and poultry products industry from eliminating the requirement of making the submissions will be in the neighborhood of $21,000–40,000. FSIS does not consider this savings to be significant. In addition to these direct savings, the largest potential savings to the industry from this final rule will be those savings associated with eliminating delays—of up to several weeks per submission—in obtaining approval. This estimated delay includes the time needed to resolve disagreements over plans and specifications, should such disagreements arise between the Agency and the establishment. This savings could be significant for some small entities, but there is no information to indicate that it will be significant for a substantial number of them.

The savings will not be significant for at least two reasons. First, establishments engaged in construction projects plan for the eventuality of an FSIS review, or at least are advised by knowledgeable food establishment architects and engineers to build FSIS review time into their project timelines. Costs are minimized because delays that do occur are anticipated. Second, under the current prior review and approval system, the Agency is able to exercise discretion expediting reviews of blueprints and facilities in specific cases to prevent economic hardship from occurring.

Eliminating the cost of blueprint prior approvals to small establishments producing meat and poultry products will necessarily remove a source of income for about 20 small expediting firms that represent official establishments for the purpose of labeling and blueprint approvals. These expediters are frequently able to shorten the time for these approvals and reduce the rejection rate on submissions because of their knowledge of Agency requirements and proximity to Agency offices. As mentioned above, the estimated annual total value of blueprint expediting is about $300,000 to $400,000 for the companies involved. This is a small part of the expediters' total business, which is mainly that of expediting label approvals and consulting work. These firms may, however, experience an increased demand for their consulting services from inspected establishments who depended upon the Government's prior approval to assure they were in compliance with the regulations, who now need help from a third party to assure they are in compliance with the regulations. These 20 entities, in any event, do not constitute a substantial number of small entities.

The equipment acceptance procedure principally affects manufacturers or other vendors of equipment. The equipment manufacturers range in size from small to large concerns and, under the current regulations, depend on FSIS prior approval to be able to sell their products to inspected establishments. It is estimated that up to 90 percent of the equipment manufacturers and other applicants for FSIS equipment acceptance are small entities. According to the SBA small business size standards (13 CFR 121.201), a small food products machinery manufacturer is one that employs 500 or fewer people. A substantial number of these small entities, several hundred, will be affected by this rule. As shown in Table 1, equipment manufacturers and vendors that are classified as small entities will save in the aggregate between $22,500 and $29,250 from elimination of the cost of applying to FSIS for acceptance of equipment. As indicated previously, equipment manufacturers and vendors will save about $10 to $12.50 per year on each new equipment model or utensil from not applying to FSIS for acceptance. FSIS does not consider this effect of the rule to be significant, even if some firms have submitted several applications per year.

Also favorably affected by the approval process are inspected establishments that may want to install newly developed equipment or apply new technologies to improve their operations. The savings from avoiding a delay before installation and operation of a newly developed piece of equipment, although it could be significant for a few entities, large or small, will not be significant for most establishments.

Finally, FSIS has determined that the elimination of prior approval of most PQC programs will not have a significant economic impact on a substantial number of small entities. Although prior approval will be eliminated, both large and small establishments subject to FSIS inspection will be permitted to continue to develop and implement PQC programs for their products and processes. Accordingly, the administrative delay for review that occurs under the present system will be eliminated.

It takes a minimum of 2 weeks for the Agency to review a typical PQC program, and as many as 1,500 establishments per year submit such programs or amendments to programs—a total of nearly 1,900 submissions per year—and about 90 percent of these establishments could be regarded as small entities. Therefore, roughly 1,100 establishments will avoid the costs associated with having to wait a minimum of 2 weeks for PQC approval, but it is not possible to identify what costs would be saved under these circumstances.

For these reasons, the Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The economic impact on such entities will, in most cases, involve the elimination of certain costs—some quantifiable, some not quantifiable—associated with doing business subject to Federal regulation, and hence will be beneficial to those entities. Though non-quantifiable, increasing the benefits that come from reducing an establishment's dependence on Government decisions is an important objective of the final rule.

**Paperwork Requirements**

FSIS has reviewed the paperwork and recordkeeping requirements in this final rule in accordance with the Paperwork Reduction Act. This final rule will substantially reduce "reporting" requirements for official establishments and other entities. FSIS estimates the total reduction in reporting to be 4,231 burden hours. The reductions will occur in the following information collection reports:

- 0583–0082, "Meat and Poultry Inspection; Application for Inspection, Sanitation, and Equipment Requirements and Exemptions":

Establishments subject to inspection will no longer have to submit blueprints and specifications along with Form FSIS–5200–5. The response time is estimated to be 30 minutes, and there are 701 total burden hours approved by the Office of Management and Budget (OMB) for this activity. Therefore, FSIS will request OMB to remove the 701 approved burden hours.

♦ 0583–0082, "Meat and Poultry Inspection; Application for Inspection, Sanitation, and Equipment Requirements and Exemptions": FSIS prior approval will no longer be required for the products of equipment companies that are used in official establishments. The response time is estimated to be 30 minutes for the prior approval of equipment. There are 2,990 total burden hours approved by OMB for this activity. Therefore, FSIS will request OMB to remove the 2,990 approved burden hours.

♦ 0583–0089, "Processing Procedures and Quality Control Systems": Establishments can continue to develop and implement PQC programs according to Agency guidelines. These establishments, with the exception of poultry irradiation facilities, are no longer required to submit a letter requesting approval of a proposed PQC program and a copy of the program to the Agency for approval prior to implementation. The response time is estimated to be 30 minutes for writing the request letter and sending the PQC program to FSIS. There are 600 total burden hours approved by OMB for this activity. In consideration of poultry irradiation facilities, 60 hours of burden will remain. FSIS does not foresee more than two irradiation facilities requesting FSIS approval of PQC programs. Therefore, FSIS will request OMB to remove 540 approved burden hours. The burden hours for PQC program development and reporting remain the same.

**List of Subjects**

*9 CFR Part 304*

Drawings, Information to be furnished, Grant or refusal of inspection, Meat inspection.

*9 CFR Part 308*

Meat inspection, Sanitation.

*9 CFR Part 317*

Meat inspection, Reporting and recordkeeping requirements.

*9 CFR Part 318*

Meat inspection, Establishment-operated quality control.

*9 CFR Part 319*

Food grades and standards, food labeling

*9 CFR Part 327*

Imports, meat inspection

*9 CFR Part 381*

Poultry and poultry products

For the reasons set forth in the preamble, FSIS is amending 9 CFR Parts 304, 308, 317, 319, 327, and 381 of the Federal meat and poultry inspection regulations, as follows:

## PART 304—APPLICATION FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

1. The authority citation for Part 304 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 304.2 is amended by revising the heading; removing paragraph (b); redesignating paragraphs (c) through (f) as paragraphs (b) through (e), respectively; and revising paragraph (a), to read as follows:

**§ 304.2 Information to be furnished; grant or refusal of inspection.**

(a) FSIS shall give notice in writing to each applicant granted inspection and shall specify in the notice the establishment, including the limits of the establishment's premises, to which the grant pertains.

* * * * *

## PART 308—SANITATION

3. The authority citation for part 308 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

**§ 308.2 [Removed and reserved]**

4. Section 308.2 is removed and reserved.

5. Section 308.5 is amended by removing ", in the judgment of the Administrator," from the first and third sentences of paragraph (a); removing paragraphs (b) through (f); redesignating paragraph (g) as (b); and revising the section heading to read as follows:

**§ 308.5 Equipment and utensils to be easily cleaned; those for inedible products to be so marked; PCB-containing equipment.**

* * * * *

## PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

6. The authority citation for Part 317 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

**§ 317.21 [Amended]**

7. Paragraph (b) of § 317.21 is amended by removing the words "an FSIS approved" and adding, in their place, the word "a".

## PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

8. The authority citation for part 318 is revised to read as follows:

**Authority:** 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

9. Section 318.4 is amended to read as follows:

a. Paragraph (d) is revised;

b. The words "or Partial Quality Control" are removed from the heading of paragraph (e);

c. Paragraph (e)(1) is amended by removing the words "or (d)" from the first sentence and both occurrences of the words "or partial quality control program" in the second sentence;

d. Paragraph (e)(2) is amended by removing the words "or program" from the first and second sentences;

e. Paragraph (e)(3) is amended by removing the words "or partial quality control program" from the first sentence;

f. The words "or Partial Quality Control" are removed from the heading of paragraph (g);

g. Paragraph (g)(1) is amended by removing the words "or a partial quality control program" and paragraph (g)(2) is amended by removing the words "or partial quality control program"; and

h. Paragraph (g)(3) is revised.

The amendments and revisions read as follows:

**§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishments; establishment-operated quality control.**

* * * * *

(d) *Partial Quality Control Programs.* (1) Any owner or operator of an official establishment preparing meat food products who is required to have a quality control program for a product, operation, or part of an operation shall make the written program and data and information generated by the program available to Program employees.

(2)(i) This quality control program shall include, as appropriate for the product, operation, or part of an operation which the program concerns, detailed information on: raw material control, the critical check or control points, the nature and frequency of tests to be made, the charts and records that

will be used, the length of time such charts and records will be maintained in the custody of the official establishment, the limits which will be used and the points at which corrective action will be taken to prevent recurrence of a loss of control, and the nature of the corrective action—ranging from the least to the most severe.

(ii) This quality control program shall ensure that the product, operation, or part of an operation which it concerns is in control and that applicable product or label limits are being met. Process control is to be determined by generally recognized statistical process control procedures.

(e) *Evaluation and Approval of Total Plant Quality Control.* (1) The Administrator shall evaluate the material presented in accordance with the provisions of paragraph (c) of this section. If it is determined by the Administrator, on the basis of an evaluation, that the total quality control system will result in finished products controlled in this manner being in full compliance with the requirements of the Act and regulations thereunder, the total quality control system will be aproved and plans will be made for implementation under departmental supervision.

(2) In any situation where the system is found by the Administrator to be unacceptable, formal notification shall be given to the applicant of the basis for the denial. The applicant will be afforded an opportunity to modify the system in accordance with the notification.

* * * * *

(3) The establishment owner or operator shall be responsible for the effective operation of the approved total plant quality control system to assure compliance with the Act and regulations thereunder. The Secretary shall continue to provide the Federal inspection necessary to carry out his responsibilities under the Act.

(f) * * *

(g) *Termination of Total Establishment Quality Control.*

(1) The approval of a total plant quality control system may be terminated at any time by the owner or operator of the official establishment upon written notice to the Administrator.

(2) The approval of a total plant quality control system may be terminated upon the establishment's receipt of a written notice from the Administrator under the following conditions:

(i) * * *

(ii) * * *

(3) If approval of the total establishment quality control system has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified total establishment quality control system will not be evaluated by the Administrator for at least 6 months from the termination date.

* * * * *

10.–11. Section 318.7 is amended to read as follows:

a. Paragraphs (b)(3)(i) and (b)(3)(ii) of § 318.7 are revised; and

b. In the table in § 318.7(c)(4) under the Class of substance "Miscellaneous," the entry under the Substance "Ascorbic Acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate" is revised.

The revisions read as follows:

**§ 318.7 Approval of substances for use in the preparation of products.**

* * * * *

(b) * * *

(3) * * *

(i) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 500 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used; provided that the establishment has a partial quality control program as provided in § 318.4(d) that results in compliance with this provision, or

(ii) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing the growth of botulinum toxin at a level sufficient for the purpose of preventing the growth of botulinum toxin; provided that the establishment has a partial quality control program as provided in § 318.4(d) that results in compliance with this provision.

* * * * *

(c) * * *

(4) * * *

| Class of substance | Substance | Purpose | Product | Amount |
|---|---|---|---|---|
| • | • | • | • | • • • |
| Miscellaneous ..... | Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate, singly or in combination under quality control. | To delay discoloration. | Fresh beef cuts, fresh lamb cuts, and fresh pork cuts. | Not to exceed, singly or in combination, 500 ppm or 1.8 mg/sq inch of product surface of ascorbic acid (in accordance with 21 CFR 182.3013), erythorbic acid (in accordance with 21 CFR 182.3041), or sodium ascorbate (in accordance with 21 CFR 182.3731); and/or not to exceed, singly or in combination, 250 ppm or 0.9 mg/sq inch of product surface of citric acid (in accordance with 21 CFR 182.6033), or sodium citrate (in accordance with 21 CFR 182.6751). |
| • | • | • | • | • • • |

* * * * *

**§ 318.19 [Amended]**

12. Paragraph (e) of § 318.19 is amended in the first sentence by removing the words "total" and "partial quality control".

**§ 318.308 [Amended]**

13. Paragraph (b) of § 318.308 is amended by removing the words "an approved" and "program" and paragraph (c) is amended by removing "and submitted to the Administrator for approval".

14. Paragraph (a) of § 318.309 is amended by removing the words "an approved" and "program" and paragraphs (b) and (c) of § 318.309 is amended by removing "and submitted to the Administrator for approval".

## PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

15. The authority citation for Part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

16. Section 319.5 is amended by revising the first two sentences of paragraph (e)(2) to read as follows:

**§ 319.5 Mechanically Separated (Species).**

* * * * *

(e) * * *

(2) A prerequisite for label approval for products consisting of or containing "Mechanically Separated (Species)" is that such "Mechanically Separated (Species)" shall have been produced by an establishment under an establishment quality control system.

* * * * *

**§ 319.104 [Amended]**

17. The last sentence in footnote 3 to the chart in § 319.104 is amended by removing the words "approved by the Administrator under § 318.4 of this subchapter."

**§ 319.105 [Amended]**

18. The last sentence in footnote 2 to the chart in § 319.105(a) is amended by removing the words "approved by the Administrator under § 318.4 of this subchapter."

## PART 327—IMPORTED PRODUCTS

19. The authority citation for Part 327 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

20. Paragraph (d) of § 327.6 is revised to read as follows:

**§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.**

* * * * *

(d) Approval for Federal import inspection shall be in accordance with part 304 of this subchapter.

* * * * *

## PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

21. The authority citation for Part 331 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

22. Paragraph (a) of § 331.3 is revised to read as follows:

**§ 331.3 States designated under paragraph 301(c) of the Act; application of regulations.**

* * * * *

(a) Each establishment located in such a designated State, shall be granted inspection required under § 302.1(a)(2) of this subchapter only if it is found, upon a combined evaluation of its premises, facilities, and operating procedures, to be capable of producing products that are not adulterated or misbranded.

* * * * *

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

23. The authority citation for Part 381 continues to read as follows:

**Authority:** 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

24. Section 381.19 is revised to read as follows:

**§ 381.19 Application for inspection; irradiation facilities.**

All applicants for inspection whose operations include irradiation and other processing shall submit, to the Administrator, a proposed quality control system as provided in § 381.149 of this part.

25. Section 381.20 is revised as follows:

**§ 381.20 Survey and grant of inspection.**

(a) Before inspection is granted, FSIS shall survey the establishment to determine if the construction and facilities of the establishment are in accordance with the regulations. FSIS will grant inspection, subject to § 381.21, when these requirements are met.

(b) FSIS shall give notice in writing to each applicant granted inspection and shall specify in the notice the establishment, including the limits of the establishment's premises, to which the grant pertains.

26. Section 381.53 is amended by removing paragraphs (a)(2) through (a)(5) and paragraph (b); redesignating paragraphs (c) through (m) as paragraphs (b) through (l), respectively; and redesignating paragraph (a)(1) as paragraph (a) and revising it to read as follows:

**§ 381.53 Equipment and utensils.**

(a) Equipment and utensils used for processing or otherwise handling any edible poultry product or component ingredient shall comply with applicable provisions of paragraphs (b) through (l) of this section and otherwise shall be of such material and construction as will facilitate their thorough cleaning, ensure cleanliness in the preparation and handling of all edible poultry products, and avoid adulteration and misbranding of such products. In addition to these requirements, equipment and utensils shall not in any way interfere with or impede inspection procedures. Receptacles used for handling inedible products shall be of such material and construction that their use will not result in adulteration of any edible product or in unsanitary conditions at the establishment, and they shall bear conspicuous and distinctive marking to identify them as only for such use and shall not be used for handling any edible poultry products.

* * * * *

**§ 381.121d [Amended]**

27. Paragraph (b) of § 381.121d is amended by removing the words "an FSIS approval" and adding, in their place, the word "a".

28. Section 381.145 is amended to read as follows:

a. Paragraph (d) of § 381.145 is revised;

b. The words "Programs or" are removed from the heading of paragraph (e);

c. Paragraph (e)(1) is amended by removing the words "or (d)" from the first sentence and both occurrences of ", partial quality control program," from the second sentence;

d. Paragraph (e)(2) is amended by removing the words "or program" from the first and second sentences;

e. Paragraph (e)(3) is amended by removing ", partial quality control program," from the first sentence;

f. The words "Programs or" are removed from the heading of paragraph (g);

g. Paragraph (g)(1) is amended by removing the words "or a partial quality control program";

h. Paragraph (g)(2) introductory text is amended by removing ", partial quality control program," and paragraph (g)(2)(ii) is amended by removing the words "or program" from the first sentence; and

i. Paragraph (g)(3) is revised.

The amendments and revisions read as follows:

**§ 381.145 Preparation of products to be officially supervised; responsibilities of official establishments; establishment operated quality control.**

* * * * *

(d) *Partial Quality Control Programs.* (1) Any owner or operator of an official establishment preparing poultry products who is required to have a quality control program for a product, operation, or part of an operation shall make the written program and data and information generated by the program available to Program employees.

(2)(i) This quality control program shall include, as appropriate for the product, operation, or part of an operation which the program concerns, detailed information on: raw material

control, the critical check or control points, the nature and frequency of tests to be made, the charts and records that will be used, the length of time such charts and records will be maintained in the custody of the official establishment, the limits which will be used and the points at which corrective action will be taken to prevent recurrence of a loss of control, and the nature of the corrective action—ranging from the least to the most severe.

(ii) This quality control program shall ensure that the product, operation, or part of an operation which it concerns is in control and that applicable product or label limits are being met. Process control is to be determined by generally recognized statistical process control procedures.

(e) *Evaluation and Approval of Quality Control Systems.*

(1) The Administrator shall evaluate the material presented in accordance with the provisions of paragraph (c) of this section. If it is determined by the Administrator on the basis of an evaluation, that the total quality control system will result in finished products controlled in this manner being in full compliance with the requirements of the Act and regulations thereunder, the total quality control system will be approved and plans will be made for implementation under departmental supervision.

(2) In any situation where the system is found by the Administrator to be unacceptable, formal notification shall be given to the applicant of the basis for the denial. The applicant will be afforded an opportunity to modify the system in accordance with the notification.

* * * * *

(3) The establishment owner or operator shall be responsible for the effective operation of the approved total plant quality control system or quality control system for irradiation facilities to assure compliance with the requirements of the Act and regulations thereunder.

* * * * *

(f) * * *

(g) *Termination of Total Establishment Quality Control.*

(1) The approval of a total plant quality control system may be terminated at any time by the owner or operator of the official establishment upon written notice to the Administrator.

(2) The approval of a total plant quality control system or quality control system for irradiation facilities may be terminated upon the establishment's receipt of a written notice from the Administrator under the following conditions:

(i) * * *

(ii) If the establishment fails to comply with the quality control system to which it has agreed after being notified by letter from the Administrator or his designee.

* * * * *

(3) If approval of the total establishment quality control system has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified total establishment quality control system will not be evaluated by the Administrator for at least 6 months from the termination date.

* * * * *

29. Paragraph (a) of § 381.222 is revised to read as follows:

**§ 381.222 States designated under paragraph 5(c) of the Act; application of regulations.**

* * * * *

(a) Each establishment located in such a designated State, shall be granted inspection required under § 381.6(b) only if it is found, upon a combined evaluation of its premises, facilities, and operating procedures, to be capable of producing products that are not adulterated or misbranded.

**§ 381.308 [Amended]**

30. Paragraph (b) in section 381.308 is amended by removing "an approved" and "program" and paragraph (c) is amended by removing "and submitted to the Administrator for approval".

**§ 381.309 [Amended]**

31. Paragraph (a) of § 381.309 is amended by removing the words "an approved" and "program" and paragraphs (b) and (c) of § 381.309 is amended by removing "and submitted to the Administrator for approval".

Done, at Washington, DC, August 11, 1997.

**Thomas J. Billy,**

*Administrator.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

## Appendix A—Guidance on Establishment Facilities and Equipment

### OVERVIEW

This Guidebook is intended for use by meat and poultry establishments in considering decisions about design and construction of their facilities, as well as the selection of equipment to be used in their operations. The material that forms the basis for this Guidebook is drawn principally from technical knowledge and experiences used by the Food Safety and Inspection Service in making its prior approval decisions about the acceptability of facilities and equipment.

The Agency is no longer making these prior approval decisions for inspected establishments; however, the technical considerations on which those decisions were based may be of interest to establishments in the future. That is the material which is reflected in this Guidebook.

### Chapter 1

### LOCATION

Selecting the location for your establishment is an important factor in providing a sanitary environment for producing meat and poultry products. When selecting a location, you will need to consider the physical environment of the site, accessibility, separation of your premises from other businesses, common areas shared by you and other establishments, and whether or not you will conduct uninspected businesses such as retail stores or custom slaughter on or near your premises. This chapter provides guidelines you may wish to consider when the select a location for your establishment.

*1. Site*

The size of the site should allow for all buildings, parking lots, access roads, and future expansion. The site should be large enough to accommodate a potable water supply for your processing needs, and a sewage system that can efficiently handle liquid waste and process water created by your establishment. In addition, potential building locations should be evaluated for sanitation hazards. In determining that possibility, consider the following guidelines:

* To the extent possible, establishments should be located in areas free of industries that attract vermin such as sanitary landfills and junk yards.

* To the extent possible, establishments should be located in areas free of odors and airborne particulate matter that may be produced by neighboring industries or other outside sources, such as oil refineries, trash dumps, chemical plants, sewage disposal plants, dyeworks, and paper pulpmills.

* The prevailing winds are an important factor in site determination because substances emanating from more distant sources may be a problem if the winds carry them to the establishment site.

*2. Separation of Official and Non-Official Establishments*

Sometimes an establishment is located next to or in the same building as other businesses which are not under FSIS inspection. In those circumstances you should take great care to keep product from becoming contaminated from the operation of the adjoining business.

**Chapter 2**

**LAYOUT**

One of the most important decisions you make in building or modifying an establishment is how you plan the layout of your building, including the placement of rooms and equipment, product flow and people traffic patterns. Not only does a poorly designed establishment affect your productivity, but it may result in congested operations that can lead to unsanitary conditions. This chapter provides guidelines that you may wish to consider in planning any modifications to your existing establishment or in building a new one.

*1. Flow of Operations*

The direction in and means by which product moves or flows within a plant is an important but often neglected consideration that can have enormous influence on sanitation and the safety of finished products. From a product flow standpoint, all raw meat and poultry products ought to be considered as potentially microbiologically contaminated and handled accordingly. Product being processed should flow progressively from highest potential exposure to contamination to the least potential exposure to contamination, with intervening processes designed to remove or otherwise reduce the contaminants whenever possible. The flow of air and people should be just the opposite, moving from the cleanest areas progressively toward less clean areas.

When designing product flow, consider the following:

* Moving product from raw to final cooked product areas to systematically reduce the risks of contamination along the way.
* Locating trash dumpsters and receptacles so that they do not create a risk of product contamination.
* Selecting rooms large enough to permit the installation of all necessary equipment with space for establishment operations and inspection.
* Locating people passageways to provide maximum clearance to products, work areas, and production equipment.
* Keeping truckways unobstructed.

*2. People Traffic Flow*

Inadequate control of the flow of people through product operational areas is one of the most serious risks for production contamination. People can act as carriers and bring from the outside contaminants such as dirt, debris, and vermin which are ideal vectors for microbiological growth and which can both directly and indirectly contaminate product. Ways in which you can reduce and control the flow of people include the following:

* Establishment design should not require personnel not routinely assigned to specific work areas to be routed through those work areas. For example, personnel working in the live animal areas should not be required to travel through cooked product areas to use welfare rooms.
* Welfare rooms, such as toilet rooms, dressing (locker) rooms, and cafeterias, should be designed to minimize contamination because of the traffic patterns of the people.

*3. Separation of Raw and Ready-to-Eat Product*

Cross contamination of ready-to-eat product by raw products may occur if the layout does not provide for separation of these products. To prevent cross contamination in the preparation of products, the following are guidelines for you to consider:

* Exposed cooked product areas should be physically separated from other areas of the establishment. Non-pedestrian passage openings may be present for the transfer of product or supplies.
* A ventilation system should be used to direct air flow away from exposed cooked product areas.
* Environmental control equipment such as fans and evaporator condensation pans should not be located above the product.
* Welfare rooms, dry storage, maintenance, box/carton make up, packaging, and palletizing areas should be separate, but adjacent to, the exposed cooked product rooms.
* Cooked product should be covered in rigid containers to protect it from contamination while in storage.
* Separate coolers and/or freezers should be available to use for exposed cooked product.
* All cooking apparatuses for exposed products should have separate entry and exit portals.
* No cooked product wash or reconditioning sinks should be used.

*4. Perishable Product Rooms*

Special care should be taken in perishable product rooms to inhibit growth of microorganisms in operations which could contaminate product. In addition, care should be taken to prevent contamination from other operations such as where raw ingredients are prepared. Non-meat or non-poultry ingredients should be prepared in a room or rooms separate from meat or poultry processing rooms. For example, preparation of raw vegetables for use in product should be performed in a room separate from meat or poultry processing rooms.

*5. Edible and Inedible Products Rooms and Areas*

Edible product can be easily contaminated by contact with inedible products, grease or sewage from inedible product areas. In order to prevent this contamination from occurring, consider the following in the placement of these rooms:

* The flow of inedible and condemned product should be designed so that it does not come into contact with edible product.
* An inedible products department should be separate and distinct from the areas used for edible products. Inedible product rooms, grease interceptors, and sewage treatment equipment must be located away from edible product rooms.
* Hooded, closed chutes that lead directly from the slaughter room to the inedible handling room are designed to prevent objectionable odors from inedible and condemned products from entering edible products rooms.
* If rendering facilities are not available at the establishment watertight storage facilities should be provided to hold these products before their removal to rendering plant. These storage facilities should be separate and apart from edible products rooms, and constructed to prevent unsanitary conditions including attraction or harborage for vermin.
* Areas for inedible trucks should be paved and enclosed for ease of cleaning and to control odors and vermin.
* Where necessary, the boiler room should be a separate room to prevent dirt and objectionable odors entering from it into rooms where meat products are processed or handled.

*6. Byproducts for Use in Animal, Pet, or Fish Food*

Establishments that process byproducts into animal, pet, or fish food should provide rooms for decharacterizing, chilling, packaging, or

otherwise preparing the byproducts. Consider the following guidelines when designing and constructing these rooms:

* Byproducts to be used as animal, pet, or fish food should be stored separately to prevent cross contamination and commingling with edible products.

*7. Coolers and Freezers*

Coolers and freezers need to have enough space to refrigerate and store product. Product should be stored in a manner that will preclude conditions which may lead to contamination of product. The following guidelines will assist you in preventing conditions which could lead to contamination of your product:

* Coolers and freezers, including doors, should be constructed of materials that can be readily and thoroughly cleaned, and durable, rigid, impervious to moisture, non-toxic, and non-corrosive. Freezer doors should be constructed and installed to prevent accumulation of frost.

* Coolers and freezers should be equipped with floor racks, pallets or other means to ensure protection of product from contamination from the floor.

*8. Dry Storage*

Packaging materials and ingredients should be stored to preclude conditions which may lead to contamination of product. The following are guidelines which may assist you in the planning of your dry storage area:

* Dry storage materials should be stored in a room dedicated to dry storage only.

* The dry storage area should be constructed so that racks can be spaced away from the walls and passageways maintained between rows. This facilitates cleaning of the area. In addition, the construction should allow for all meat or poultry ingredients and/or packaging materials to be stored in closed containers on racks or pallets.

*9. Incubation Room for Canned Products*

A room or incubator for incubating samples of fully-processed canned meat or poultry must be provided in all establishments conducting regular canning operations. Consider the following guidelines when building this room:

* An accurate time/temperature recorder must be provided. To prevent temperature variations, a means for air circulation should be provided.

* Shelves should be provided to hold canned product. The shelves should be made of expanded metal or heavy gauge wire mesh and be removable for cleaning.

* The floor in the room should be pitched to a floor drain equipped with a removable screw-plug.

* The door of the room should be equipped for sealing by the inspector, if necessary.

*10. Vehicular Areas Outside the Building*

Special care should be given in the design of vehicular areas outside your building, not only to provide room for trucks and other vehicles to operate without damaging your building, but to prevent unsanitary conditions which might contaminate product in your establishment. You should consider the following in designing your vehicular areas:

* Areas outside the building where vehicles are loaded or unloaded should be paved with concrete or a similar hard surface. Hard surface areas allow these areas to be kept clean and eliminate the potential for water puddles or dust.

* Areas outside the building where vehicles are loaded or unloaded should be drained. Drainage from the loading docks should be confined to the immediate area of the dock.

* The vehicular areas should be large enough to accommodate the turning radius of the largest trucks or shipping vehicles used by the establishment.

* The vehicular areas adjacent to the establishment should have hose connections for cleaning.

**Chapter 3**

**WELFARE FACILITIES FOR ESTABLISHMENT EMPLOYEES**

One source of potential contamination of product is cross contamination from employee welfare facilities. In designing and locating employee facilities, great care should be given to preventing overcrowding and congestion and to providing enough handwash sinks and toilets for your employees. This chapter provides additional guidelines that you may wish to consider in making any modifications to or building any welfare facilities for your employees.

*1. Dressing (Locker) Rooms*

Dressing rooms must be provided for employees. In addition to privacy considerations, these dressing rooms should be located where they will not be a potential source of cross contamination of product. Consider the following guidelines for these dressing rooms:

* Dressing rooms should be separate from rooms or compartments where product is prepared, stored, or handled.

* Dressing rooms should be separated from the toilet area.

* Separate dressing rooms should be provided for each sex if both sexes are employed by the establishment.

* Dressing rooms should have abundant, well-distributed light of good quality.

* Separate dressing rooms for raw product and other product department employees will help prevent cross contamination of product.

* Receptacles for soiled clothing should be provided adjacent to employees' dressing rooms.

*2. Lockers*

Lockers should be provided for employees clothing and personal items. To prevent insanitary conditions, consider the following guidelines when choosing the type of lockers and the arrangement and locations for them:

* To prevent the potential for cross contamination, the location of lockers should be separate from rooms or compartments where product is prepared, stored, or handled.

* Lockers should be large enough to store a change of clothing and other personal items.

* For ease of cleaning, lockers should be constructed of materials that are rigid, durable, non-corrosive, easily cleaned and inspected, impervious to moisture, a light, solid color, with a smooth or easily cleaned texture, and have sloping tops.

* Lockers should either be installed so that there is enough room under them that they can be easily cleaned and inspected, or they should be sealed to the floor.

*3. Drinking Fountains*

Sanitary drinking water fountains should be provided. Consider the following guidelines when installing drinking water fountains:

* Drinking water fountains should be provided at convenient locations throughout the establishment to minimize the distance that employees need to travel to reach a fountain. This is especially important in preventing cross-contamination from employees working in raw or inedible areas and traveling to processing or ready-to-eat areas to use a fountain. Consider the following locations for placing drinking fountains:

** welfare areas including cafeterias, dressing (locker) rooms, and toilet rooms

** inspectors' offices

** edible product areas including kill floor, deboning, and cut-up areas

** inedible product areas

** immediately outside freezers and coolers

** storage areas

* Drinking water fountains should be connected to the potable water supply and either directly connected to the underfloor drainage system or should discharge through an air gap to a hub drain.

* Drinking water fountains should be other than hand operated, and if placed as part of handwash sink, should be located high enough to avoid splash from the sink.

*4. Toilet Rooms*

Toilet rooms can easily become a source of potential contamination of product. Care should be taken in the design of these rooms from their location in the establishment's layout to the number of toilets provided. Consider the following guidelines:

* Toilet rooms need to be separated from the rooms and compartments in which products are prepared, stored, or handled.

* Toilet rooms that open directly into rooms where meat products are exposed should have self-closing doors and should be ventilated to the outside of the building.

* Toilet rooms should be arranged so they are entered through an intervening dressing room or vestibule and not directly from a production or storage room.

*5. Eating Rooms and Areas*

To prevent employees from contaminating products or contaminating their food with microorganisms from the raw products or from their working environment consider the following:

* Separate eating rooms or areas should be provided for employees.

*6. Handwash Sinks*

One of the most important steps you can take to prevent cross contamination of product by your employees is to provide conveniently located handwash sinks. Handwash sinks are needed in toilet rooms, dressing (locker) rooms, and production rooms. Consider the following guidelines when making decisions as to where you need a handwash sink:

* Handwash sinks are needed near toilet rooms and dressing (locker) rooms. They should be other than hand operated. There should be hot and cold running water, soap, and towels. Single use towels should be used.

* Handwash sinks in welfare rooms and areas should have a combination mixing faucet delivering both hot and cold water with an high enough above the rim of the bowl to enable the washing of arms as well as hands.

*7. Ventilation*

In designing your welfare rooms, such as toilet and dressing rooms, care should be taken to make sure that they are ventilated to prevent odors from entering production areas. Consider the following guidelines:

* Welfare rooms that are not air conditioned should be mechanically ventilated through an exhaust fan taking air to the outside. Airflow from welfare rooms should be released outside the establishment.

* Toilet and dressing rooms that are located where no natural ventilation is available should be equipped with an exhaust fan (activated by a common switch with the lighting in the area) and a duct leading to the outside. Doors to dressing and toilet rooms ventilated in this manner should have a louvered section about 12 inches by 12 inches minimum in the lower panel to facilitate airflow.

*8. Employees Working in Inedible Product Areas*

Association of employees working in inedible product areas with other employees through common welfare rooms increases the risk of cross-contamination of product. To minimize this risk to product, consider the following guidelines:

* Separate welfare rooms for employees working in areas such as hide cellars, condemned or inedible product rooms, or live animal holding areas, from welfare rooms of other employees working with raw or heat processed, exposed, edible product.

**Chapter 4**

**CONSTRUCTION**

A frequently overlooked area of construction design is the selection of appropriate construction materials for the establishment. This chapter provides guidelines for construction and the selection of construction materials that you may wish to consider when making modifications to your current establishment or building a new one.

*1. Building Construction Materials for Rooms (Finished Surfaces)*

Production and storage areas need to be constructed with materials that are readily and thoroughly cleaned. Product in production and storage areas is at risk for contamination from indirect contact with materials used for construction of the building. In order to be readily and thoroughly cleaned, building construction materials in production and storage areas must be:

* Rigid and durable.

* Non-toxic and non-corrosive.

* Impervious to moisture.

* A light, solid color such as white.

* Smooth or textured with an easily cleaned, open pattern, for example, a pattern where the veins and depressed areas are continuous or have an outlet and are not enclosed.

In addition, consider the following guidelines for selecting construction materials:

* In non-production and non-storage areas, building construction materials should be easy to clean thoroughly.

* Special consideration should be given before using wood as a construction material.

** Wood is absorbent and can absorb not only water but other substances including chemicals that create a risk for contamination of meat or poultry products.

** Wood is easily damaged and may create wood particles (splinters) that contaminate meat or poultry products.

** If wood is used as a construction material in exposed product areas of the official establishment, it is recommended that the wood be milled smooth and completely sealed with a coating to prevent the wood from adulterating meat or poultry product. The coating should be able to be readily and thoroughly cleaned durable, rigid, impervious to moisture, non-toxic, and non-corrosive.

** The use of hot linseed oil to treat or coat wood in exposed product areas is not recommended because it promotes the growth of molds and fungi.

*2. Floors*

In addition to any obvious debris on a floor, product can become contaminated by the flooring or microorganisms living in debris in tiny crevices in the floor. In order to avoid these sources of contamination, consider the following guidelines when selecting and installing flooring in your establishment:

* Floors in areas where product is handled or stored should be constructed of durable, easily cleanable materials, and be impervious to moisture. Commonly used materials are concrete, quarry tile, brick, and synthetic material.

* Floors should be installed and maintained to reduce the likelihood of cracks, depressions, or other low areas that would accumulate moisture.

* Floors where operations are conducted should have a slip-resistant surface. Good results are obtained by using brick or concrete floors with abrasive particles embedded in the surface. Concrete floors should have a rough finish.

* Floors should be sloped to avoid puddles or depressions within the slope where water will stand.

*3. Coving/Curbs*

Coving is used at the wall-floor juncture, column (post)—floor juncture, and equipment support-floor juncture to provide a smooth transition for ease of cleaning and inspection. Consider the following guidelines when using coving or curbs:

* Coving in production and storage areas should include the following criteria:

** All seams should be tight-fitting and sealed to eliminate all cracks and crevices which may shelter insects, vermin, and microorganisms.

** The coving should eliminate any sharp angles that allow the accumulation of materials.

* Curbs should be provided to protect walls and wall finishes. Curbs should be high enough to protect the walls from pallets, trucks, or containers used in the establishment. Coving should be provided at the base of the curb.

*4. Stairs*

In selecting stairs consider the following:

* Stairs should have solid treads and closed risers and should have side curbs of similar material.

*5. Catwalks and Access Platforms*

When installing catwalks and access platforms consider the following guidelines:

* Catwalks and access platforms in edible product handling departments should be constructed of materials that meet the same guidelines as flooring.

* Open grating should not be used for the flooring of catwalks and access platforms inside the establishment, particularly in production areas. Dirt and other debris from shoe soles can be scraped off by the grating and contaminate product, packaging material, and equipment.

* Catwalks and access platforms should not be installed over production lines and processing equipment.

*6. Interior Walls Including Posts and Partitions*

To prevent product from becoming contaminated by contact with interior walls, care needs to be taken in selection of materials for the finished surface of walls. Consider the following when selecting a finish:

* Interior walls, in areas where product is stored or handled, should be finished with materials that will make them susceptible to being readily and thoroughly cleaned and impervious to moisture. Examples of such materials are glazed brick, glazed tile, smooth concrete, and fiberglass reinforced plastic (FRP).

* Walls should have a smooth texture, not one that is rough or uneven.

* Fasteners for wall covering material should be solid, smooth headed, and not have recesses which allows the collection of foreign material.

*7. Ceilings*

Ceilings, in areas where product is stored or handled, should be constructed to prevent the collection of dirt or dust that might sift through from the areas above or fall from overhead collecting surfaces onto equipment or exposed products. Therefore, it is recommended that ceilings and overhead structures be maintained free of sealing paint or plaster, dust, condensate, leaks, and other materials or defects. In addition, ceilings in areas where product is stored or handled should be constructed and finished with materials that can be thoroughly cleaned and are moisture resistant. Examples of such materials are smooth concrete and fiberglass reinforced plastic.

*8. Windows and Skylights*

Windows (and skylights) can be a potential source of contamination of product by dirt, water, debris, or broken glass. Consider the following when selecting and installing windows:

* All outside windows, except for those in receiving and feed rooms, should have protection to exclude insects, birds, and other vermin.

* Window ledges should be sloped about 45 degrees to prevent the accumulation of dirt, water, or debris.

* To avoid damage to window glass from impact of hand trucks and similar equipment, the sills should be at least 3 feet above the floor.

* Windows that are installed in walls in exposed product rooms should have panes of acrylic or polycarbonate plastic or other shatter-proof material.

*9. Doorways and Doors (General)*

Doors are barriers that allow the movement of product and people, but also present a barrier to contamination such as dirt, insects, and other vermin as well as the microbiological hazards that they carry. The door type, construction material, and room in which the door is located are all important considerations when doors are installed in the establishment. Doors are important in maintaining sanitary conditions especially in production and storage areas. In production and storage consider the following guidelines for doors:

The most effective doors have the following characteristics:

* They are impervious to moisture.

* They are tight fitting to minimize air exchange and to prevent the entry of insects and vermin into the establishments.

* They are self-closing and used throughout the establishment, especially in areas where toilet rooms open directly into rooms where meat and poultry are exposed, to prevent contamination of products with odors and their associated contaminants.

* They are high and wide enough to allow the movement of exposed product through the doorways without it coming into contact with the door or jamb.

* They are rigid and durable, and the junctions at jambs, walls, and floors are sealed to eliminate all cracks and crevices for debris, insects, and dirt to collect.

* Doors that open directly to the outside of the building from production rooms should have an intervening closed space, such as a vestibule or enclosed lock, to prevent the direct access of contaminants and microbial organisms to areas inside the establishment.

*10. Types of Doors*

In selecting a type of door for your establishment you need to consider the location of the door and whether or not product will be traveling through it. The following guidelines for different types of doors may be useful to you when selecting a door:

* The horizontal double-swinging, impact door is a bi-parting, inflexible panel door with plastic windows (vision panels) that swings only in the horizontal plane. If you select this door, consider the following:

** This door may be useful in rooms with dimensions that would not permit the use of a roll-up, vertical sliding or horizontal sliding door.

** Because this door must be manually opened, the door can be damaged creating sanitation and maintenance problems.

* The horizontal sliding door (manual and automatic) is a single or bi-parting, inflexible door that moves only in the horizontal plane. If you select this door, consider the following:

** This door may be useful in rooms with dimensions that would not permit the use of a roll-up or vertical sliding door.

** The automatic opening option is recommended not only for sanitation reasons, but it also prevents damage.

* The vertical sliding door (manual or automatic) is a single, inflexible panel door that moves only in the

vertical plane. If you select this door, consider the following:

** This door may be useful in rooms with dimensions that would not permit the use of a roll-up or horizontal sliding door.

** The automatic opening option is recommended not only for sanitation reasons, but it also prevents damage.

* The overhead garage-type door (manual or automatic) is a hinged, multi-paneled door that moves from the vertical to the horizontal plane. If you select this door, consider the following:

** This door may be an excellent choice for sheds or buildings used to store equipment, such as a lawn mower, that is used for the outside maintenance of the establishment's property.

** It is recommended that these types of doors not be used in exposed product areas or areas subject to wet clean-up because these doors have spaces between the panels that allow the collection of product, such as meat and fat, as well as contaminants.

* The roll-up door (manual or automatic) is a single flexible panel door that moves only in the vertical plane and when open, coils tightly onto a drum assembly. If you select this door, consider the following:

** This door can be an excellent alternative especially where space for opening a door is limited.

** Several additional features should be installed on this type of door to make it an effective barrier against contamination.

* The air curtain or air door is a door that uses a layer of air generated by mechanical fans to separate two rooms or areas. If you select this door, consider the following:

** This door needs to be carefully selected, installed, and maintained to be effective.

** If an air imbalance (pressure imbalance) develops at the door opening, the separation effect may be diminished or eliminated. Air imbalance can occur from air flow changes from any other openings in the rooms especially other doors.

** The movement of the air can stir up contaminants, such as dirt and dust, if the area around the door is not kept clean.

**Chapter 5**

**LIGHTING, VENTILATION, REFRIGERATION, AND EQUIPMENT**

Controlling the manufacturing environment is important in maintaining a sanitary environment in meat and poultry operations. This chapter provides guidelines concerning lighting, ventilation, refrigeration, and equipment for meat and poultry establishments that you should consider in building or modifying an establishment.

*1. Lighting*

Well-distributed, good-quality artificial lighting is needed at all places where natural light is unavailable or insufficient. Lighting is critical to maintaining a sanitary environment for slaughter and processing operations. Without adequate lighting, insanitary conditions are often difficult to see and correct. When selecting and installing lighting systems, consider the following requirements:

* Light fixtures in rooms where exposed meat or poultry is handled should ensure maximum safety, to preclude contamination of products with broken glass and prevent the collection of dirt, product, and debris on lamp surfaces, including fixture surfaces not easily cleaned or inspected.

* Lighting must be intense enough to allow both the establishment and inspection personnel to see insanitary conditions and product contamination. The intensity of lighting is measured in foot candles. The following charts provide recommendations for minimum foot candles for artificial lighting:

TABLE 1.—GUIDELINES FOR MINIMUM LIGHTING INTENSITY IN MEAT ESTABLISHMENTS

| Area | 30 ft. candles | 50 ft. candles |
|---|---|---|
| General lighting (in areas where animals are killed, eviscerated, and products are processed or packaged) | X | |
| Offal cooler | X | |
| Carcass coolers | X | |
| Freezers | X | |
| Dry storage | X | |
| Ante-mortem inspection | X | |
| Suspect pen inspection area | | X |
| Inspection stations | | X |
| Establishment quality control inspection areas | | X |
| Reconditioning and reinspection areas | | X |
| All other areas | X | |

TABLE 2.—GUIDELINES FOR MINIMUM LIGHTING INTENSITY IN POULTRY ESTABLISHMENTS

| Area | 30 ft. candles | 50 ft. candles | 200 ft. candles |
|---|---|---|---|
| Ante-mortem inspection | X | | |
| Inspection station (traditional) | | X | |
| Inspection station (NELS/SIS/NTI) | | | X |
| Pre and post chill inspection areas | | | X |
| Reconditioning and reinspection areas | | | X |
| Establishment quality control inspection areas | | | X |
| All other areas | X | | |

*2. Ventilation*

There should be enough ventilation for all areas of the establishment including workrooms, processing, packaging, and welfare rooms to ensure sanitary conditions. A good ventilation system is important to the production of wholesome meat and poultry products. Without controlling the quality of the air coming into the establishment, products may become contaminated with dust, insects, odors, or condensation. When designing your ventilation systems, you should consider the following guidelines:

* The ventilation system should be designed so that turbulence is avoided. The longer the distance the air has to flow, the greater the resistance the air encounters not only from static air, but from solid objects such as walls, equipment, people, and product.

* The ventilation system should be designed with the size of the establishment in mind. The larger the facility, the greater the volume of air that must be moved.

* The ventilation system should be designed to compensate for changes in outside temperature and humidity that cause condensation problems within the establishment.

* Screens and filters should be used where needed to screen out dust, odors, and insects brought in from the outside to prevent product contamination.

* Mechanical ventilation should be used to bring in fresh air to areas where natural ventilation is inadequate.

* Ventilation should prevent vapor formation, such as steam or fog, that would affect sanitation or interfere with the inspector's ability to perform inspection.

* When exhaust fans are installed, provision should be made to provide enough outside make up air to prevent air from being drawn into and through docks, coolers, and production areas to the area served by the exhaust fan.

*3. Equipment (General Design and Construction)*

Equipment materials should comply with 21 CFR, Parts 170–190 of the Food and Drug Administration (FDA) regulations for direct food contact.

Equipment and utensils used for handling as preparing edible product or ingredient in any official establishment should be easily cleaned and not be a source of contamination. Consider the following guidelines when selecting equipment.

* All direct product contact surfaces should be smooth; maintained free of pits, cracks, crevices and scale; corrosion and abrasion resistant; non-absorbent; shatterproof; nontoxic; and not capable of migrating into food products.

* Equipment should not be painted on areas in or above the direct product contact area.

* Construction materials that are sources of contamination include cadmium, antimony or lead as plating or the plated base material, lead exceeding 5 percent in an alloy and enamelware and porcelain used for handling and processing product.

* Equipment should be designed and installed in such a way that foreign materials, such as lubricants, heat exchanger media, condensate, cleaning solutions, sanitizers and other nonfood materials, do not contaminate food products.

* Equipment is self-draining or designed to be evacuated of water.

* All product contact surfaces allow contact with cleaning solutions and rinse water.

* Clean-in-place (CIP) systems should have sanitation procedures that are as complete and effective as those for cleaning and sanitizing disassembled equipment. To remove all organic and inorganic residues, CIP systems should meet the following criteria:

** Cleaning and sanitizing solutions and rinse water should contact all interior surfaces of the system.

** The system should be self-draining, with no low or sagging areas.

** The pipe interiors should be highly polished (120–180 grit) stainless steel for easy inspection.

** Easily removable elbows with quick-disconnect mechanisms should be installed at each change of direction. Elbows should be short enough to permit verification that the interior has been cleaned.

## Chapter 6

## WATER SUPPLY

The water supply should be ample, clean, and potable with adequate pressure and facilities for its distribution in the establishment and its protection against contamination and pollution.

*1. Potable Water*

An adequate supply of fresh clean water is of primary importance in plant operations. The first requirement is that the water supply to the plant be potable or safe for human consumption or food processing. The plant water supply must meet the potability standards in the National Primary Drinking Water Regulations issued by the Environmental Protection Agency (EPA).

*2. Backflow*

Public health officials have long been concerned about cross-connections that may permit backflow in potable water supply distribution systems. Cross-connections may appear in many forms and in unsuspected places. Reversal of pressure and flow in the water system may be unpredictable. Plumbing cross-connections between a potable and nonpotable water supply may constitute a serious public health hazard. There are numerous cases where cross-connections have been responsible for contamination of potable water and have resulted in the spread of disease. These concerns, as they relate to meat and poultry plants, deserve special attention. The problem is continual as potable water and piping systems are installed, repaired, replaced, or extended.

Two basic types of hazard may be created in piping systems: the solid pipe with valved connections and the submerged inlet. The solid pipe connection is often installed to supply an auxiliary piping system from the potable source. It is a direct connection of one pipe to another pipe or receptacle. Solid pipe connections may be made accidentally to waste disposal lines when it is incorrectly assumed that the flow will always be in one direction. An example would be connecting a line carrying used, nonpotable cooking water from a water jacket or condenser directly to a waste line without an air gap (see below). "Backflow" will occur with a submerged inlet if the pressure differential is reversed without an air gap. Submerged inlets are created when the outflow end of a potable water line is covered with water or other liquid. The other liquid may not be potable. Submerged inlets could be created by a hose lying in a pool or puddle of water on the floor.

Once a cross-connection exists, any situation that causes a pressure differential with the potable line having the lower pressure can result in contamination of the entire water distribution system and potable water supply. This is called backflow and can be produced under a variety of circumstances as illustrated below:

* Backsiphonage is one form of backflow. It is caused by negative pressure in the delivery pipes of a potable water supply and results in fluid flow in the reverse direction. It may also be caused by atmospheric pressure exerted on a pollutant liquid source that forces the pollutant into a potable water supply system that is under vacuum. The action in this case is the common siphon phenomenon. The negative pressure differential that will begin the siphoning action is a potential occurrence in any supply line.

* Differential pressure backflow refers to a reversed flow because of backpressure other than siphonic action. Any interconnected fluid systems in which the pressure in one exceeds the pressure of the other may cause flow from one to the other because of the differential. This type of backflow is of concern in buildings where two or more piping systems are maintained. The potable water supply is usually under pressure from the city water main. Occasionally, a booster pump is used. The auxiliary system often is pressurized by a centrifugal pump, although backpressure may be caused by gas or steam pressure from a boiler. A reversal in differential pressure may occur when pressure in the potable system drops below that in the system to which the potable water is connected. The best method of preventing this type of backflow is the complete separation of the two systems and/or an air gap. Other safety methods involve the installation of mechanical backflow prevention devices. All methods require regular scheduled inspection and maintenance to ensure ongoing effectiveness of installed devices.

Some areas that you should consider providing some form of protection from backflow and back siphonage include the following:

* Water supply to pens for wash down or livestock watering.

* Water supply to compressor cooling systems, cooling towers, and boiler rooms.

* Water supply to cleanup systems, clean in place (CIP) systems, etc.

* Water supply to hose connections.

Various mechanical antibackflow devices are available to prevent backflow into a potable water supply system. Generally, the selection of the type and number of fail-safe devices should be based upon the degree of hazard from contamination. Additional considerations include piping size, location, and the need to test periodically the backflow devices to ensure proper operation.

There are six basic types of devices that can be used to correct cross-connections:

* Air gap
* Barometric loops
* Vacuum breakers—both atmospheric and pressure type
* Double check valves with intermediate atmosphere vent
* Double check valve assemblies
* Reduced pressure principal backflow preventers
* Specific requirements concerning backflow can be found in local building and board of health codes.

**Chapter 7**

**GENERAL PLUMBING FACILITIES**

One of the most important factors to consider in the design and modification of establishments is the plumbing system. If the plumbing system is not properly installed, contamination of products can occur from flooding, back siphonage, stoppages and cross-connections with the potable water system. This chapter provides guidelines concerning the plumbing facilities, in meat and poultry establishments. For additional information on the design and modification of plumbing facilities, consult the National Plumbing Code.

*1. Hose Connections and Hoses*

There should be enough conveniently located hose connections with steam and water mixing valves or hot water connections provided throughout the establishment for cleaning purposes. Hose connections are important in promoting routine cleaning of the establishment. Consider the following guidelines when determining how many hose connections, location of hose connections, and storage of hoses:

* The number of hose connections depends on the number of drains.
* If a shut-off nozzle is provided on the hose after the hot and cold water mixing valve, the vacuum breaker at the hose connection to the mixing valve will not work. Vacuum breakers should be installed on the hot and cold water supplies prior to the mixing valve to prevent such problems.
* Hose connections should be provided with vacuum breakers to prevent back siphonage.

*2. Establishment Drainage System*

There need to be efficient drainage and plumbing systems for the prompt removal of liquid and suspended solid wastes from the processing environment. Consider the following guidelines when designing or modifying your drainage system:

* All plumbing should be sized, installed and maintained in accordance with applicable state and local plumbing codes, ordinances, and regulations.
* Drainage lines should be located so that if leakage occurs, it will not affect product or equipment.

*3. Floor Drains*

All parts of floors where operations are conducted should be well drained. There are two basic types of drains: point drains and trench drains. Point drains, the most commonly used drain in most areas, are located in strategic points in the room with the floor sloped toward the drain. The waste water flows over the surface of the floor until it reaches and is carried away by the drain. Trench drains involve a trough or trench that collects the waste from a larger area and directs the flow to a drain opening. The flooring is sloped toward the trench.

In a typical plant, one four-inch (10.16 cm) drainage inlet is provided for each 400 square feet (37.16 square meters) of floor space. A slope of about one-quarter inch per foot (2.08 cm per meter) to drainage inlets is generally adequate to ensure proper flow with no puddling. In dry production areas, where only a limited amount of water is discharged on to the floor, an adequate slope may be about one-eighth inch per foot (1.04 cm per meter). It is important that floors slope uniformly to drains with no low spots to collect liquid.

* The location of floor drains depends upon many factors such as the type of task conducted in the space, the geometric shape of the area drained, truck traffic patterns, and equipment locations.
* There are special drainage considerations in areas where there is a high volume of water usage. The water in trench drains should flow in the opposite direction of the product flow, for example, from the poultry evisceration to the picking areas.
* All parts of floors where wet operations or where floors are to be frequently hosed down should be pitched to floor or trench drains.
* Floor drains should not be located under equipment because it makes them inaccessible cleaning.
* Rooms without floor drains such as dry storage, large finished product coolers, and distribution warehouses may prefer to use mechanical cleaning machines instead of installing drains. Examples of such cleaning devices are floor scrubbers and dry/wet vacuum machines.

*4. Trap Seals*

Each floor drain should be equipped with a deep seal trap and vented properly to the outside. The purpose of such traps is to seal off the drainage system so that foul odors (sewer gases) cannot enter the plant. Effectiveness of the trap depends upon enough water remaining to constitute a seal. As water flows through the trap and down the drainpipe, suction is created that will pull the water out of the trap and break the seal unless the suction is broken by venting the drainpipe on the effluent side of the trap to the outside air. The seal can also be broken by evaporation of trapped water. This is not a problem in frequently used drains, but does occur where drains are seldom used.

*5. Drainage Lines*

All drainage lines must comply with local code requirements. They should be installed and maintained to be leakproof. To prevent drainage lines from becoming entrances into the plant for pests, including rats and mice, all lines must be equipped with effective rodent screens. Secure drain covers, in addition to keeping out pests, also serve to prevent blockage of the traps and drainage lines with product scraps or other material too large to flow freely.

*6. Cleanouts*

Cleanouts should be installed in the drainage system to prevent sewer blockages. Consider the following guidelines when installing cleanouts:

* Cleanouts should be located so they are readily accessible, and can be used without constituting a threat of contamination to edible products.
* To help avoid water puddling, cleanouts should be located on the "high lines" of floor slopes and away from traffic patterns.

**Chapter 8**

**ESTABLISHMENT SEWAGE TREATMENT**

The design and construction of sewage treatment facilities must comply with local code requirements. An improperly designed sewage system can contaminate the ground and water supply. This chapter provides

guidelines concerning sewage treatment at meat and poultry establishments that you may wish to consider in the installation of a sewage treatment facility.

*1. Establishment Sewage Treatment*

Sewage, one the most dangerous sources of human pathogens, should never be allowed to come into contact with products, equipment, utensils, or any food contact surfaces. When installing an establishment sewage treatment facility, consider the following guidelines:

* The system should be large enough to handle the amount of sewage that the establishment produces and accommodate future increases.
* If a private septic tank, pre-treatment, or treatment system is used, it should be designed and operated to prevent contamination of products.
* The sewage facility should be located away from product operations and ingredient and packaging storage areas.
* An area for cleaning solid waste containers with hot water, drains, and curbing should be located near any solid waste disposal facility.

*2. Grease Catch Basins or Interceptors*

Grease catch basins can be a source of contamination of products if not properly designed and located. Consider the following guidelines when constructing a grease catch basin:

* Catch basins or interceptors for recovering grease should not be located in or near edible product departments or areas where edible products are shipped or received.
* When a catch basin is located inside an establishment, it should be sealed with a gastite cover and located in a ventilated room.
* Grease catch basins should be constructed so they can be completely emptied of their contents for cleaning.
* The area surrounding an outside catch basin should be paved with impervious material, such as concrete, and drained.

**Chapter 9**

**MEAT SLAUGHTER ESTABLISHMENTS**

Although the flesh of healthy livestock is practically sterile, when the animal is killed many factors can contribute to contamination of the carcass including improperly designed and constructed slaughter facilities. This chapter provides guidelines for meat slaughter facilities to consider in building or modifying slaughter facilities.

Because different species of livestock need different slaughter facilities, this chapter is organized in the following way:

* Sections 1 through 8 describe general guidelines for facilities that slaughter cattle, calves, sheep, goats, hogs, and equines.
* Sections 9 through 37 describe additional guidelines for slaughter facilities as follows:
* Sections 9 through 19 contain additional guidelines for cattle slaughter operations;
* Section 20 contains additional guidelines for calf, sheep, and goat slaughter operations;
* Sections 21 through 26 contain additional guidelines for hog slaughter operations; and
* Section 27 contains additional guidelines for equine slaughter operations.

**Note:** The guidelines in this chapter are in addition to Chapters 1 through 8 which contain general guidelines which apply to all official meat and poultry establishments.

**Meat Slaughter—General Facilities Guidelines**

The following guidelines apply to all establishments that slaughter cattle, calves, sheep, goats, hogs and equines. If you are building or modifying an establishment that slaughters these species, consider these facilities guidelines to prevent contamination of carcasses during slaughter operations.

*1. Livestock Pens*

In addition to preventing contamination of the slaughter department and minimizing contaminates on the hides of the animals, proper design and construction of livestock pens prevent injury to the animals. Consider the following facilities guidelines when designing and constructing livestock pens:

* Livestock pens should be located outside the slaughter department to prevent contamination of products from dust, odors, and other contaminates. If possible, the livestock pens should be separated from the department by full-height partitions of impervious material.
* Livestock pens, driveways, and ramps should be free from sharp or protruding objects which could cause injury or pain to the animals.
* Floors of the pens, ramps, unloading chutes, and runways should be constructed to provide good footing for livestock. Waffled floor surfaces and cleated ramps are effective construction designs.
* Floors of the pens, ramps, unloading chutes, and runways should be sloped for drainage and cleaning.
* Pen enclosures (except gateways) should be high and sturdy enough to prevent livestock from escaping.
* Gates, fences, and chutes should have smooth surfaces that are easily cleaned.
* Man gates or, if the walls are concrete, toe holds formed in the walls should be present to allow people to escape from pen enclosures in an emergency.
* To help prevent livestock from slipping and falling on floors covered with excess water, thereby further contaminating their hides, water troughs should be provided with overflows located above or adjacent to pen floor drains.
* Hose connections should be provided for cleanups.
* Covered pens should be provided to protect crippled or downer animals from adverse climatic conditions. If held overnight, the pens should be large enough to allow the animals to lie down and have facilities for feed and water. Pens and driveways should be arranged so that sharp corners and direction reversals of driven animals are minimized.
* A "U.S. suspect" or "U.S. condemned" pen should be available at all times and designed to allow for complete separation, including the drainage system, from other livestock.

*2. Ante-mortem Inspection Areas*

Ante-mortem inspection areas should be designed and constructed to facilitate inspection and to prevent animals from being injured. Consider the following guidelines in designing and constructing these areas:

* To avoid delays in slaughter operations, pens for ante-mortem inspection should have the capacity for holding the maximum number of animals of the various species that will be slaughtered in a single day.
* To facilitate the ante-mortem inspection of animals, a separate suspect pen with a squeeze chute should be provided, where the temperature of the animals may be taken.
* At least 50 percent of the livestock pen, including the area where the suspect pen and squeeze chute are located, should be under a weather tight roof to provide an area for proper ante-mortem inspection in inclement weather.
* Special consideration should be given to designing ante-mortem inspection facilities to allow for humane transporting of crippled or downer animals into the slaughtering department. Because crippled and downer animals have difficulty moving,

special doorways and hoists to transport them to the stunning area should be provided.

*3. Slaughter Area*

The slaughter area is one of the most difficult areas to keep sanitary because of the nature of slaughter operations. Consider the following guidelines in designing and constructing slaughter areas to minimize contamination of carcasses:

* The slaughter area should be separated from the outside by a full-height partition or wall made of impervious material.

* Any doors to the outside of the slaughter area should be self closing to minimize the risk of contamination, including contamination by vermin.

* Slaughter areas should have floor space arranged to facilitate the sanitary conduct of operations and efficient inspection. For example, to prevent contamination of carcasses, truckways through which products are conveyed from the slaughter area to rooms such as the offal cooler, should be located so that the material is not trucked beneath rails from which dressed carcasses and products are suspended. For the same reason, personnel traffic should not move through lines of carcasses.

*4. Stunning Areas Including Chutes and Alleys*

Stunning areas, chutes and alleys, should be designed to prevent congestion, injury to animals, and minimize contamination of hides which can lead to contamination of the carcasses. Consider the following guidelines when designing these facilities:

* All pathways, chutes, and alleys leading to stunning areas, and the stunning areas, should be large enough for the species being slaughtered.

* All pathways, chutes, and alleys leading to stunning areas, and the stunning areas, should be free from pain-producing restraining devices, sharp projections such as loose boards, exposed bolt ends, splintered or broken planking, protruding metal, and exposed wheels or gears.

* All pathways, chutes, and alleys leading to stunning areas, and the stunning areas, should be free of unnecessary holes and openings where the animals' feet or legs may be injured.

* Overhead gates should be covered at the bottom edge to prevent, injury to the animals.

* Flooring should be constructed of roughened or cleated cement to reduce falls.

* Stunning areas should be provided for confining animals for stunning before bleeding.

* If ritualistic slaughter operations are conducted in the stunning area, shackles to confine the animals also should be provided.

* When captive bolt stunners are used, the stunning areas should be designed and constructed to limit the free movements of animals so that the operator can locate the stunning blow with a high degree of accuracy.

* When electrical stunning is used, the stunning area should be constructed so that any power activated gates will not cause injury to the animals.

*5. Rail Arrangement and Truckways*

To prevent contamination of carcasses, rails should be arranged to provide enough room for carcasses to move without touching equipment, walls, columns, other fixed parts of the building, and other carcasses. Consider the following guidelines when arranging rails in your establishment:

* Consideration should be given to the type of rail and the rail speed when determining how rails are to be arranged.

* Trim rails should be arranged so that carcasses pass the final carcass inspection position after the final trim.

* To prevent the carcass from becoming contaminated by debris on the floor and from splashes during cleanups, the cooler rails should provide for clearance from the lowest part of the carcass to the highest point of the floor.

* A room or area for washing gambrels, hooks, and trolleys should be provided. The room or area should have an exhaust fan in an outside wall to dispense steam.

*6. Viscera Separation and Edible Byproducts Refrigeration*

Because edible organs and parts (offal) are handled at temperatures conducive to bacterial growth, care must be taken in providing facilities for separation of viscera and for refrigeration of edible byproducts to prevent them from becoming contaminated. Consider the following guidelines for holding edible by products:

* Facilities, such as viscera trucks or pans, should be provided for separating and handling viscera of the various species of animals to prevent commingling.

* To prevent cross contamination, a separate cooler or a separately drained part of a carcass cooler should be provided for holding edible organs and parts (offal) under refrigeration.

* To convey the edible byproducts to a cooler, a truck with removable metal drip pans should be provided.

* To prevent cross contamination, establishment and inspection personnel from the slaughter department should be able to access the edible byproduct cooler without passing through a line of carcasses or through a congested carcass cooler.

*7. Carcass Washing*

Special facilities for washing inspected carcasses are needed to remove bone dust and other accidental contamination from the carcass. Consider the following guidelines when designing and constructing this area:

* A separately drained area or an area that is sloped to a floor drain should be provided where inspected carcasses are washed.

* If the carcasses are washed manually by establishment personnel, a platform should be provided to allow establishment personnel to be able to reach all parts of the carcass.

*8. Retain Room/Compartment*

* A retain room, cage, compartment, or receptacle may be required by inspection. Depending on the needs of inspection, consider the following guidelines for designing and constructing this room:

* The retain room or compartment must be equipped for locking or sealing.

* The room or compartment needs to be marked conspicuously "U.S. Retained."

* If the retain compartment is located in the cooler, the compartment should be separated from the remainder of the cooler to prevent cross-contamination of inspected and passed carcasses. The separation can be accomplished by creating a compartment constructed of partitions of corrosion resistant wire screen or flat expanded metal.

**Cattle—Additional Facilities Guidelines**

In addition to the guidelines (sections 1 through 8) for all establishments that slaughter livestock, the guidelines in the following sections 9 through 19 apply to establishments that slaughter cattle.

*9. Cattle Dressing Layout*

There are a number of different cattle dressing layouts that can be used in a cattle slaughtering operation. Depending on the number of animals slaughtered, rate of inspection, and number of inspectors, you should carefully consider your options for a layout for slaughter operations.

*10. Rail Heights, Distances, and other Slaughter Area Dimensions*

To assist you in planning the layout of your slaughter area, the following is a chart for recommended distances including rail heights, rail distances, and other cattle slaughter area dimensions:

TABLE 3.—GUIDELINES FOR DISTANCES IN CATTLE SLAUGHTERING ESTABLISHMENTS

| Item | Vertical distance | Horizontal distance |
|---|---|---|
| Bleeding rail (distance from rail to point of application of shackle to shackle foot—4 feet (1.2 m)). | 16 feet (4.9 m) | |
| Dressing rails (trolley length—1 foot 3 inches. (.4 m)) | 12 feet 3 inches (3.7 m) | |
| Beef cooler rails (trolley length—1 foot 3 inches. (.4 m)) | 11 feet (3.4 m) | |
| Moving equipment—heights of conveyor rails, platforms, top of viscera inspection table. | | |
| Dry landing area in front of stunning pen. | | 7 by 8 feet (2.1 by 2.5 m) |
| Curb of bleeding area to pitch plates (no header rails). | | 5 feet (1.5 m) |
| Between header rail and carcass washing rail, if parallel. | | 6 feet (1.8 m) |
| Between header or washing rails and wall of slaughtering room. | | 3 feet (.9 m) |
| Between center lines of dressing beds. | | 8 feet (2.5 m) |
| Between moving top table and dressing rail at inspector's platform. | | 5 feet 6 inches (1.7 m) |
| Area for sterilizing viscera inspection truck. | | 7 by 8 feet (2.1 by 2.5 m) |

Note.—When rails are involved in horizontal distance measurements, the distance is measured from the center of the rail. When rails are involved in vertical distance measurements, the distance is measured from the top of the rail to the highest part of the floor.

*11. Dry Landing Area*

A dry landing area large enough to accommodate stunned animals removed from the stunning pen should be provided adjacent to the stunning pen. Consider the following guidelines in designing and constructing this area:

* The area should allow enough room for the livestock.

* The dry landing area should be located and drained separately from the bleeding area.

* The dry landing area should be enclosed by a fence high enough and sturdy enough to prevent escape of inadequately stunned animals.

*12. Bleeding Area*

To contain blood and prevent it from contaminating carcasses, a curbed bleeding area should be provided. Consider the following guidelines in designing and constructing this area:

* The bleeding area should be located so that blood will not be splashed on stunned animals lying in the dry landing area or on carcasses being skinned on the cradle beds, if they are used.

* The curb around the bleeding area should be located far enough from the dressing bed or cradle to allow room for the carcasses to be maneuvered into the bed or cradle.

*13. Facilities for Head Removal*

To avoid contamination of the carcasses from rumen contents, facilities for head removal need to be carefully designed:

* Space should be provided for dehorning, flushing, washing, and inspecting heads; for storing heads on racks or trucks after removal from carcasses; and for head workup.

* When a down hide puller is used, the head drop and head removal area should be curbed and drained.

* A head wash cabinet should be provided.

*14. Facilities for Hide Removal*

To limit contamination by hides, a hide chute should be provided near the point where hides are removed from carcasses. Consider the following guidelines when designing and constructing these facilities:

* The chute should have a hood of sturdy rust-resistant metal with a push-in door closely fitting a metal frame inclined so as to be self-closing. In order to evacuate airborne contaminants from hides such as scurf, dirt, spores, odors, and hairs, a vent pipe should extend from the hood vertically to a point above the roof.

* Space needs to be provided between hide pulling and carcass evisceration to permit cervical inspection prior to viscera inspection.

*15. Facilities for Feet and Udders*

Because of the high risk of contamination of carcasses from feet and udders which have been removed from carcasses, special facilities, such as a chute or slide, should be used for transferring these parts to containers. Consider the following guidelines for these facilities:

* A chute or slide should be used to avoid splashing of milk or other contaminants onto the carcasses, floor, equipment, and personnel.

*16. Foot Platforms*

Foot platforms installed for establishment employees performing various carcass dressing operations need to be carefully designed and installed to prevent contamination of carcasses. Consider the following guidelines:

* If elevated foot platforms are used, they should be located so they do not touch skinned portions of the carcass.

* If stationary platforms are used, they should be set far enough away from the dressing rail to prevent contact with the forelegs of cattle.

* To provide space for operations and to prevent cross contamination by carcasses, push fingers or rail stops on powered conveyor or gravity flow rails should be spaced far enough apart to prevent contact between carcasses.

*17. Viscera Trucks*

In establishments with a limited rate of slaughter, viscera are usually placed in a specially designed handtruck for inspection. Consider the following guidelines for use of viscera trucks:

* For ease of cleaning, viscera trucks should be constructed of stainless or galvanized steel.

* Viscera trucks should have an inspection pan and a lower viscera compartment.

* When viscera trucks are used, a separately drained area should be available for washing and sterilizing such equipment.

* To prevent contamination of products, the washing facilities should be located at or near the point where condemned products are discharged from the trucks. When placed where splash might contaminate edible products, the truck washing area should have walls high enough to contain any splash.

*18. Moving-Top Inspection Tables*

In some establishments, viscera are placed on a moving-top table for inspection. These tables have special considerations as follows:

* The table should be of a length that provides for evisceration, inspection, and viscera removal.

* A continuous cleaning and sanitizing system should be available for the table.

* To prevent contamination of products and the surrounding area, the viscera inspection table should have a drain under the table to prevent water from draining across the floor to other areas of the room.

* To prevent contamination of carcasses, the foot platform, handwash sinks, hand tool disinfection unit (sterilizer), boot washing cabinet, and boot storage locker should be located alongside the loading end of the table.

*19. USDA Post-mortem Inspection Station and Retain Rail*

Special facilities are needed for USDA post-mortem inspection for cattle. Consider the following provisions that must be met when designing these stations:

* An inspection station consisting of 5 feet (1.5 m) of unobstructed line space for each head or carcass inspector.

* When viscera tables are used, there must be 8 feet (2.5 m) for each viscera inspector on the inspector's side of the table needs to be provided.

* A minimum of 50 foot candles of shadow-free lighting at the inspection surfaces of the head, viscera, and carcass.

* A handwash sink (other than one which is hand operated), furnished with soap, towels, and hot and cold water, and located adjacent to the inspector's work area.

* For each head and viscera inspector on cattle slaughter lines a sterilizer located adjacent to the inspector's work area.

* For mechanized operations, a line control switch adjacent to each inspection station.

* Facilities to position tally sheets or other recording devices, such as digital counters and facilities to contain USDA condemned brands.

* Rail(s) for holding retained carcasses for final disposition along with platforms and handwash sinks. To prevent possible cross contamination, the retain rail must be long enough to prevent carcasses from touching.

*20. Calves, Sheep, and Goats—Chart of Guidelines for Distances for Rails and Other Facilities*

TABLE 4.—GUIDELINES FOR DISTANCES IN CALF, SHEEP, AND GOAT SLAUGHTERING ESTABLISHMENTS

| Item | Vertical distance | Horizontal distance |
|---|---|---|
| Bleeding rail for calves (distance from top of rail to point of application of shackle to shackled foot—2 feet 6 inches (.8 m)). | 11 feet (3.3 m) | |
| Bleeding rails if only sheep or goats are slaughtered | 9 feet–11 feet (2.7 m–3.4 m) | |
| Dressing rail (trolley length—1 foot (.3 m)) | 8 feet 6 inches (2.6 m) | |
| Cooler rails, calf carcasses (trolley length—1 foot (.3 m)). | 8 feet 6 inches (2.6 m) | |
| Cooler rails, sheep or goat carcasses (trolley length—1 foot (.3 m)). | 7 feet 6 inches–8 feet 6 inches (2.3 m–2.6 m). | |
| Moving equipment | | |
| Vertical of rail to edge of viscera inspection stand | | 2 feet (.6 m) |
| Length of rail from point of evisceration to point where carcass inspection is completed. | | 6 feet (1.8 m) |

Note.—When rails are involved in horizontal distance measurements, the distance is measured from the center of the rail. When rails are involved in vertical distance measurements, the distance is measured from the top of the rail to the highest part of the floor.

**Hogs—Additional Facilities Guidelines**

In addition to the general guidelines in sections 1 through 8, the following guidelines apply to those establishments that slaughter hogs. Consider these additional guidelines when building or modifying an establishment that slaughters hogs.

*21. Livestock Pens*

* To prevent hogs from overheating, pens for hogs should have either a roof for shelter or a shower system to keep the animals cool in weather with temperatures greater than 70 °F (21 °C).

*22. Location of Certain Operations*

* To prevent contamination, the following equipment and operations should be located in an area or areas separate from the carcass dressing area, except for the openings for access and passage of carcasses:

** Hoisting, sticking, and bleeding.

** Scalding vat.

** Dehairing machine located within a curbed area having nonclogging drainage outlet.

** Gambrelling table.

** Singeing operations.

*23. Rail Arrangements for Hogs*

The following chart gives guidance for recommended distances for rails and other facilities for hog slaughter operations.

TABLE 5.—GUIDELINES FOR DISTANCES IN HOG SLAUGHTERING ESTABLISHMENTS

| Item | Vertical distance |
|---|---|
| Bleeding rail to sticker's platform. | 10 feet 6 inches (3.2 m). |
| Extension of bleeding rail to top of scalding vat. | 9 feet (2.7 m). |
| Dressing rails [1] | 11 feet (3.3 m). |
| Gambrels (suspending carcasses to floor (1 foot (.3 m)). | 10 feet (3 m). |

TABLE 5.—GUIDELINES FOR DISTANCES IN HOG SLAUGHTERING ESTABLISHMENTS—Continued

| Item | Vertical distance |
|---|---|
| Distances from rail to bottom of inspection pans and various foot platforms. | |
| Rails in coolers for hog carcasses with heads removed (1 foot (.3 m)). | 9 feet (2.7 m). |
| Rails to coolers for carcasses with heads attached (1 foot (3 m)). | 10 feet (3 m). |
| Vertical of dressing rail to various foot platforms and widths of platforms. | |

[1] Heads dropped but still attached.

Note.—When rails are involved in vertical distance measurements, the distance is measured from the top of the rail to the highest part of the floor.

*24. Scalding*

To avoid contamination of the carcass, a scalding tank is used to remove hair and other contaminants.

Consider the following when installing a scalding tank:

* A mechanical exhaust fan above the scalding tank will disperse steam.

*25. Shaving, Singeing, and Carcass Washing*

* A shaving rail (throw-out rail) should be provided prior to the head dropping operation, so that unclean hogs can be removed from the dressing line for cleaning.

* If a singer is used to remove hair, it should have an automatic cut off and starter switch to prevent the carcass from burning when the chain stops.

* If a polisher is used, water sprays to clean the carcass of hair should be provided.

* To remove hair from the hide which was missed by the scalder and dehairing process, a carcass washer should be located at a point after completion of shaving operations and before the head dropper's station.

*26. Inspection Facilities*

Special facilities are needed for USDA post-mortem inspection for swine. Consider the following guidelines when designing these stations:

* An inspection station consisting of 5 feet (1.5 m) of unobstructed line space for each head or carcass inspector must be provided.

* When viscera tables are used, there must be 8 feet (2.5 m) for each viscera inspector on the inspector's side of the table needs to be provided.

* A minimum of 50 foot candles of shadow-free lighting at the inspection surfaces of the head, viscera, and carcass must be provided.

* A handwash sink (other than one which is hand operated), furnished with soap, towels, and hot and cold water, must be provided adjacent to the inspector's work area.

* For each head inspector on swine slaughter lines, a sterilizer must be located adjacent to the inspector's work area.

* For mechanized operations, a line control switch must be provided adjacent to each inspection station.

* For swine slaughter lines requiring three or more inspectors, and for those one-and two-inspector configurations where the establishment installs a mirror, special facilities are needed. At the carcass inspection station one glass or plastic, distortion-free mirror, at least five by 5 feet (1.5 by 1.5 m), must be mounted at the carcass inspection station. The mirror should be mounted far enough away from the vertical axis of the moving line to allow the carcass to be turned, but not over 3 feet (90 cm) away, to allow any inspector standing at the carcass inspection station to readily view the back of the carcass.

* Facilities to position tally sheets or other recording devices, such as digital counters and facilities to contain USDA condemned brands must be provided.

**Equines—Additional Facilities**

In addition to the general guidelines in sections 1 through 8, and the guidelines for cattle in sections 9–19, if you plan to slaughter equines, such as horses, mules, donkeys, and ponies, the following are additional guidelines when building or modifying equine slaughter facilities.

*27. Equine Slaughter Facilities*

* The facilities for equine slaughter establishments are essentially the same as those for slaughtering cattle. Exceptions include the following rail heights and clearances.

TABLE 6.—GUIDELINES FOR DISTANCES IN EQUINE SLAUGHTERING ESTABLISHMENTS

| Items | Vertical distance | Horizontal distance |
|---|---|---|
| Bleeding rail ..... | 18 feet (5.5 m) | |
| Dressing rails (trolley length—1 foot 3 inches (.4 m)). | 12 feet 6 inches (3.8 m) | |
| Cooler rails (trolley length—1 foot 3 inches (.4 m)). | 12 feet 6 inches (3.8 m) | |
| Cooler rails for carcasses in quarters. | 8 feet 6 inches (2.6 m) | |
| Line of drop-offs to line of half hoists. | | 17 feet (5.2 m) |
| Clearance between walls, posts, etc. and adjoining rails in slaughter rooms and coolers. | | 3 feet (.9 m) |
| Curb of bleeding area to pritch plates. | | 6 feet (1.8 m) |
| Dry landing area (minimum). | | 7 by 8 feet (2.1 by 2.5 m) |

Note.—When rails are involved in horizontal distance measurements, the distance is measured from the center of the rail. When rails are involved in vertical distance measurements, the distance is measured from the top of the rail to the highest part of the floor.

**Chapter 10**

**POULTRY SLAUGHTER ESTABLISHMENTS**

Although the flesh of healthy living poultry is practically sterile, when the bird is killed many factors can contribute to contamination of the carcass including improperly designed and constructed slaughter facilities. This chapter provides guidelines for facilities for poultry slaughter establishments for you to consider in building or modifying your slaughter facilities. If you slaughter small animals such as rabbits or migratory fowl under voluntary inspection, use this chapter for guidance. See Chapters 1 through 8 for general information which applies to all official meat and poultry establishments.

*1. Holding Sheds or Coops*

When building holding sheds or coops for poultry, consider the following guidelines:

* A minimum of 30 foot candles of lighting must be provided to facilitate ante-mortem inspection.

* The holding sheds should be weather tight.

*2. Docks for Receiving and Hanging Live Poultry*

Consider the following guidelines to prevent dust, feathers, and other obnoxious substances from entering areas where edible products are being prepared, handled, or stored:

* The live hanging dock needs to be physically separated from these areas. The separation should be accomplished by full height impervious walls with self-closing impervious doors, and openings limited to that necessary for poultry conveyor systems.

*3. Slaughter Area*

Consider the following guidelines for the slaughter area to minimize risk of contamination to products:

* The slaughter area (including stunning, bleeding, picking, scalding, and eviscerating operations) should be separated from those areas of the establishment where edible products are prepared or stored to minimize the risk of contamination.

* The blood in the slaughtering area, especially the stunning and bleeding area, should be contained in as small an area as possible.

*4. USDA Post-Mortem Inspection Station*

There are four systems of post-mortem inspection: Traditional Inspection, the Streamlined Inspection System, the New Line Speed Inspection System, and the New Turkey Inspection System. Each of the systems has mandatory requirements to minimize the risk of contamination to products and to promote efficient inspection. However, with the exception of the lighting requirements, there are no facilities guidelines for these post-mortem systems.

*5. Facility Guidelines for Poultry Inspection Stations*

Note: There are no facility guidelines for Traditional Inspection System facilities except for lighting.

TABLE 7.—FACILITY GUIDELINES FOR POULTRY INSPECTION STATIONS

| Facility | SIS | NELS | NTI |
|---|---|---|---|
| The conveyor line should be level for the entire length of the inspection station | X | X | X |
| The vertical distance from the bottom of the shackles to the top of the adjustable inspection platform, when it is set in its lowest position, should be a minimum of 60 inches (150 cm) | X | X | X |
| There should be a minimum of 8 feet (2.5 m) of space along the conveyor line for one inspection station and 16 feet (4.9 m) for two inspection stations | X | | X |
| There should be a minimum of 42 feet (12.8 m) of space along the conveyor line for three inspection stations | | X | |
| There should be a minimum of 6 feet (1.8 m) of space along the conveyor line for the establishment employee presenting the birds | | X | |
| There should be a minimum of 4 feet (1.2 m) of space for inspector and a minimum of 4 feet (1.2 m) of space for the establishment helper along the conveyor line | X | X | X |
| There should be selectors or "kick-outs" with birds on shackles with 12 inch (30 cm) centers (two inspection stations on line) | X | | |
| There should to be selectors or "kick-outs" with birds on shackles with 18 inch (45 cm) centers (three inspection stations on line) | | X | |
| A distortion-free mirror should be located at each inspection station which is: at least 3 feet (.9 m) wide and 2 feet (.6 m) high; adjustable between 5 inches (12.5 cm) and 15 inches (38 cm) behind the shackles; positioned in relation to the inspection platform so that the inspector is positioned opposite it 8 to 12 inches (20.3 cm to 30.5 cm) from the downstream edge; installed so that guide bars do not extend in front of the inspection mirror; and illuminated by a light which is positioned above and slightly in front of the mirror to facilitate the illumination of the bird and mirror surface | | X | |
| There should be a slip-resistant inspection platform with a 42 inch (105 cm) high rail on the back side and with ½ inch (4 cm) foot bumpers on both sides and front | X | X | X |
| There should be an inspection platform with a minimum length of 4 feet (1.2 m) and minimum width of 2 feet (.6 m) | X | X | X |
| There should be an adjustable inspection platform that easily and rapidly adjusts a minimum of 14 inches (35 cm) vertically while standing | X | X | X |
| A trough or other facilities extending beneath the conveyor where processing operations are conducted from carcass opening to trimming should be provided which is wide enough to prevent trimmings, drippings, and other debris from accumulation on the floor or platform; and has enough clearance between suspended carcasses and the trough to prevent contamination of carcasses by splash | X | X | X |
| A conveyor line stop/start switch should be provided at each inspection station within easy reach of the inspector | X | X | X |
| A minimum of 200-foot candies of shadow-free lighting with minimum CRI value of 85, which can be met by deluxe cool fluorescent lighting, must be provided | X | X | X |
| Online hand rinsing facilities with continuous flow water withineasy reach should be provided for each inspector and establishment helper | X | X | X |
| Online hand rinsing facilities with continuous flow water within easy reach must be provided for each establishment presenter | | X | |
| Receptacles for condemned carcasses and parts should be provided at each inspection station | X | X | X |
| Hang-back racks should be provided and located within easy reach for establishment helpers | X | X | X |

*6. Facility Guidelines for Poultry Reinspection Stations*

Note: There are no guidelines for Traditional Inspection System facilities except for lighting.

TABLE 8.—FACILITY GUIDELINES FOR POULTRY REINSPECTION STATIONS

| Facility | Prechill and postchill reinspection stations | Reinspection stations | |
|---|---|---|---|
| | | NELS | NTI |
| | SIS | | |
| There should be a minimum of 6 feet (1.8 m) of space along the conveyor line for the establishment presenter | | X | |
| There should be a minimum of 3 feet (.9 m) of space along each conveyor line and for SIS after each chiller | X | | X |

TABLE 8.—FACILITY GUIDELINES FOR POULTRY REINSPECTION STATIONS—Continued

| Facility | Prechill and postchill re-inspection stations | Reinspection stations | |
|---|---|---|---|
| | SIS | NELS | NTI |
| A table for reinspecting sample birds should be provided which is at least 2 feet (.6 m) wide, 2 feet (.6 m) deep, and 3 feet (.9 m) high; readily cleanable; and drainable | X | | |
| A table for reinspecting sample birds should be provided which is at least 3 feet (.9 m) wide and 2 feet (.6 m) deep; readily cleanable; and drainable | | X | X |
| A space which is level and protected from all traffic and overhead obstructions should be provided | X | X | X |
| The vertical distance from the bottom of the shackles to floor needs to be a minimum of 48 inches (120 cm) should be provided | X | X | X |
| A minimum of 200-foot candles of shadow-free lighting with a minimum CRI of 85 at the table surface, which can be met by deluxe cool white fluorescent lighting, must be provided | X | X | X |
| A separate clipboard holder for holding the recording sheets should be provided | X | X | X |
| Handwash sinks within easy access of all persons working at the station should be provided | X | X | X |
| Hang-back racks should be provided which are within easy reach of all persons working at the station, and designed to hold 10 carcasses | X | X | X |

*7. Evisceration and Reprocessing Areas*

The evisceration area should be arranged to facilitate efficient sanitary operations and inspection. Consider the following guidelines when designing these areas:

* Production lines should have drip pans installed beneath them, when these lines are located above areas such as walkways, truckways, work stations, and equipment, to prevent water, poultry products, or any other material from falling on the production areas below.

* An area should be provided for a reprocessing station for the reconditioning of retained products including removal of contamination.

*8. Inedible Offal*

In poultry establishments, the facilities for handling inedible offal should be designed to accommodate the size of the poultry being handled and to prevent the contamination of edible products. Consider the following guidelines when designing these areas:

* The facilities, whether troughs or otherwise, should be large enough to allow clean and orderly removal of inedible offal during processing, without a pile up and without cross contamination of edible products.

* The water rail for semi-dry poultry offal systems for young chickens should range from 34 to 36 inches (86 to 90 cm) in height above the standing surface and be positioned 7 to 10 inches (18 to 26 cm) horizontally from the vertical line of the shackle.

* The water rail for semi-dry poultry offal systems for turkeys should range from 34 to 36 inches (86 to 90 cm) in height above the standing surface and be positioned 13 to 15 inches (33 to 38 cm) horizontally from the vertical line of the shackle.

* The floor gutter should be distinct, with vertical sides inside the post supporting the water rail (a minimum of 6 inches or 15 cm is suggested to prevent workers feet from being in the gutter). Gutters should also be wide enough to catch all material dropping from the carcass.

* Splash protectors should be installed at all points along the evisceration line where splashing of employees might occur.

* Pipes for conveying offal should be constructed to permit daily cleaning and positioned so that sanitation will not be a problem, i.e., no pipes lying on the floor or bottom of a gutter.

* Side walls of hoppers should be pitched to assure that material deposited in the hopper will slide to the point where the offal is being mechanically conveyed.

**Chapter 11**

**PLANT WASTE DISPOSAL**

Control and disposal of plant wastes are major concerns. Optimum use and reduction of waste are essential goals of economic production in all plants. From a plant sanitation standpoint, there are two vital concerns with waste disposal: (1) Plant waste contains most of the contaminants and disease-producing and product-spoiling microorganisms from the plant production processes; (2) plant wastes attract pests such as insects and rodents.

*1. Organic Waste Disposal*

When disposing of organic wastes such as feathers, viscera, blood, and manure, the following guidelines should be considered:

* Waste materials should not be allowed to accumulate on or near the premises.

* Waste should be disposed of without creating insanitary or objectionable conditions.

* Waste should be removed daily.

* Holding bins should be cleaned before reuse and protected from insect and rodent harborage and infestations.

*2. Rubbish Removal*

Rubbish, such as paper towels, cartons, office waste, and labeling materials, can become a sanitation problem. The following guidelines should be followed when removing rubbish:

* Suitable containers should be conveniently located throughout the plant and emptied frequently.

* The accumulation of rubbish before its removal should not cause a nuisance.

* Plant refuse should be removed daily, or more often if necessary, to prevent a nuisance.

**Appendix B—Guidelines for Developing Partial Quality Control Programs (PQC's)**

Guidelines for Developing Partial Quality Control Programs Overview

Quality control programs are essential to the proper functioning of any meat or poultry processing establishment. Processors have found quality control is good business because it can reduce costs, control product uniformity, and ensure that proper standards are being maintained throughout the production cycle. By increasing controls over raw ingredients, processes, and other variables, effective quality control systems can ensure compliance with company specifications and with the guidelines and requirements of the Department of Agriculture. Although in-plant inspectors have a role in the oversight of these programs, quality control is a management function and plant management should develop and implement effective quality control plans specific to their process and products.

There are many approaches plants can take to ensure quality control. Some plants do not take any special measures during production, and changes are made only on finished product. Some plants incorporate preventive measures, such as product testing, during processing, and others undertake a series of specific actions to prevent mistakes and to ensure that products meet consumer expectations. Whether

limited or comprehensive, a quality control system should be in the written record of the plant. As experience is gained, the record keeping system may be improved by focusing on "hot spots" which are responsible for the major problems, revising specifications, or upgrading them to include sensitive testing devices, for example.

Proper documentation of plant activities will become increasingly important in a HACCP inspection environment. Proper documentation of any in-plant process can save time and money and result in fewer mistakes by the establishment. The degree and complexity of the records depend on the scope of the processing operation; completeness of the records is also a reflection of management commitment to quality control.

Plant or corporate management support is the key to a successful quality control program. Plant personnel will sense a lack of commitment to quality if management support is not apparent.

Good quality control managers do not necessarily have to use complex, expensive methods to ensure control. Experience has shown that successful establishments function smoothly by paying close attention to the basics, documenting the process when it is running smoothly and when problems occur, and making necessary corrections as quickly as possible.

**Chapter 1. Introduction**

Title 9 of the Code of Federal Regulations at Parts 318.4(d) and 381.145(d) require Federal meat and poultry processing plants to establish and maintain written records for each critical check or critical control point and make the records available to FSIS inspection personnel upon request.

* Although the regulatory requirement for FSIS to review and approve PQC programs has been rescinded, the new regulatory requirements in 318.4(d) and 381.145(d) provide information to plants about the necessary steps they must take to meet the new record keeping requirements in a Pathogen Reduction and HACCP inspection environment.

* FSIS will continue to provide guidance to establishments to ensure that their Partial Quality Control (PQC) programs for specific products and processes are adequate to ensure product compliance with regulatory requirements. The information in this document is intended to be used as guidance material and is based on FSIS' experience and historical perspective reviewing and approving PQC programs.

A few model PQC programs, representative of many products and processes, are presented below.

**Chapter 2. Components of PQC Programs**

PQC programs should address four areas: (1) raw materials control; (2) process control; (3) records control; and (4) corrective/preventive action.

*1. Raw Materials Control*

Raw materials control involves the receiving and stocking of only those materials that conform to established specifications. To ensure successful control of raw materials, establishments should consider the following:

* To begin the development of a raw materials control procedure, plants should list each of the materials used to produce the product.

* Once the list has been created, establishments should develop a receiving inspection procedure.

* The procedure may address raw materials specifications, proper materials handling, proper storage, and disposal of nonconforming materials.

* Materials should be routinely monitored to ensure they are meeting the established procedures.

*2. Process Control*

Process control programs ensure continuous control of particular processes so that product standards will be met. Process control programs should meet the following criteria:

* They should identify the products or processes to be controlled.

* They should identify the control features necessary for product compliance.

* They should establish control limits.

* They should establish procedures for meeting the established limits.

* They should provide monitoring procedures for ensuring that procedures are followed.

An important aspect of process control is effective data collection and analysis. Process control programs should include sampling plans that permit reliable collection and analysis of data. After sampling plans have been developed, process limits can be established.

* The limits established should be appropriate to ensure that quality standards will be met.

* The limits established should be appropriate to ensure that meet regulatory or label limits for the product or process will be met.

* Variation in materials, methods, processes, and products requires the setting of a tolerance for each quality standard. A tolerance limit is the total allowable deviation from an established standard. The limit allows for the normal variability which is inherent in any process.

* Tolerance limits may need to be continuously adjusted to prevent problems.

* Limits for certain processes have been established and used historically by industry; these limits are reflected in PQC programs previously approved by FSIS. The tolerances meet the intent of the requirements in 318.4(d) and 318.145(d)(2)(ii) and may continue to be used.

* Establishments may elect to use these previously established tolerances or develop their own by following the requirements outlined in the regulation.

*3. Records*

An important aspect of quality control is process documentation. Adequate records are essential to the system's capacity to provide the necessary controls. The records provide a history of the process and document when the process is working and when problems are occurring. The use of standard sheets, check-off forms, and other simple records is generally more successful than a complicated system. Charts and graphs already in use may be all that is necessary to document the system. The degree of record keeping and the complexity of the records depend, in large part, on the scope of the processing operation. In reviewing records, plant management should:

* Look at those aspects of production most likely to cause problems. This procedure also can be useful in determining what critical checks need to be incorporated into a quality control program.

* Correct problems as they occur. Proper documentation of the process can save time and money because it provides an establishment an opportunity to correct a problem before the finished product has been completed.

*4. Corrective/Preventive Action*

Corrective action plans address the action to be taken when problems develop in a production process. Corrective action plans are essential components and important indicators of the strength of quality control programs. The primary emphasis of the plans should be on correction/prevention of problems in the production process. The type of plan used in a particular quality control program will be determined by the establishment and the processes conducted at the plant. Generally,

corrective action plans should include the following features:

* They should provide for the identification of problems or deviations in processes.

* They should provide for the identification of the causes of problems.

* They should specify the corrective steps to be initiated and the criteria for determining how noncompliant products should be handled.

* The plans should provide that corrective/preventive measures be implemented after a determination that no safety hazards exist.

* The plans should provide for documentation of the corrective and preventive measures taken.

**Models**

The following models are intended to be used as general guidelines to developers of quality control programs. They are not intended to be complete QC programs or a complete listing of all rotational QC programs but offer a framework and one approach to QC program development. In actual QC programs, details regarding tests, action criteria, corrective actions, and responsible personnel would reflect the specific process and establishment circumstances. Any specifications or limits cited are only examples and do not establish or imply Agency standards.

*Model 1*—Preparation of a PQC Program for the Addition of 10-Percent Solution to Poultry

Raw Material Control

* Poultry—Chicken breasts will be received frozen, examined for condition, and immediately placed in the receiving dock freezer. (Specifications to be set by establishment.)

* Dry ingredients—Upon receipt, the dry ingredients will be visually inspected for acceptance and immediately placed in the dry storage warehouse. (Specifications to be set by establishment.)

* Corrective action—If either the poultry or the dry ingredients is found to be unacceptable, it will be tagged immediately and Quality Control will be notified. QC will evaluate and initiate appropriate product disposition.

* Documentation—All critical checks and corrective actions will be recorded on the receiving log.

Process Control

* Formulation control.

** Formulation control—A pumping solution will be formulated according to the label formulation. One ingredient of the solution will be weighed by a quality control technician for each batch. If an ingredient is found to be m0ore than 0.5 percent above or below the weight stated on the formula, the following will result: (1) the problem will be evaluated and the appropriate corrective action taken; (2) each ingredient of every batch will be checked until five consecutive batches are found to be in compliance.

** Documentation—All formulation check results and corrective actions, if needed, will be recorded on the formulation log.

** Scale accuracy control.

*** Scale checks—All scales associated with the pumping operation will be verified for accuracy before operations begin. Scale accuracy will be checked against a known weight. If a scale is found to be inaccurate, it will not be used until it has been calibrated.

*** Documentation—All scale check results and corrective actions, if required, will be recorded on the scale maintenance record.

Lotting

* A lot will be defined as one shift's production; a sublot as approximately 500 pounds of product.

Added Solutions

* Green weight determination—Each sublot will be identified with a unique code representing date and time of day the sublot is being produced.

** The sublot will be weighed before pumping.

** The identifying code and weight will be written on a tag, which will be attached to the combo bin containing the sublot.

* Pumping—Every 30 minutes, 10 turkey breasts will be selected from a sublot before it is pumped. The 10 turkey breasts will be weighed, then passed through the pumping machine. The turkey breasts will be allowed to drain for 5 minutes, then weighed again.

** Tolerances—Each pump check will not be more than 0.5 percent over the target pump of 10 percent. If a pump check is found to exceed the tolerance, all product back the last pump check will be retained and allowed to drain until it reaches the target pump. In addition, the pumping operations will be stopped, evaluated by a QC technician, and not allowed to start until the problem has been corrected.

** Documentation—All pump checks and corrective actions, if needed, will be documented in the pumping log book.

* Finished weight determination—After a sublot has been pumped, a final weight will be obtained and recorded on the pumping tag.

** Tolerances—No sublot will be more than 1.2 percent above the target pump of 10 percent. The average of all sublots will meet the target pump. If any sublot or the average of the sublots exceeds tolerances, all product will be retained and allowed to drain until the target pump has been reached.

** Documentation—All green weights, finished product weights, and corrective actions, if needed, will be recorded in the finished product log book.

**Note:** Model also can be used in developing the following PQC programs:

Percent Labeling Control
Water-misted/Ice-glazed Meat and Poultry Products
Addition of Solution to Raw/Cooked Meat and Poultry Products (Injection, Massaging, Tumbling, Basting, Marination, and Tenderization)
Fat and/or added water for Raw Product

*Model 2*.. Preparation of a PQC Program for Fat-Content-per-Serving Labeling for Meat and Non-Meat Products

Scales/Meters

* Establish verification procedures to ensure that all scales/meters used in the formulation and analytical testing of the product are accurate. The procedure should include checks against a standard weight or measurement.

Lotting

* Define lot and sublot.

* Establish a standardized procedure for identifying the lot throughout the process.

Formulation

* Establish a procedure to verify the formulation of each lot/sublot in compliance with the approved label formulation.

* Establish tolerances for non-restricted ingredients.

* No ingredient in the formulation should be substituted for another.

Fat content of the meat portion (ground beef, ground pork, or products with a declared fat limit on the label)

* Establish a statistically sound sampling procedure for each lot/sublot of the meat portion.

* Identify the analytical method used, such as an AOAC method. Weight Control (serving and component).

* Establish a statistically sound sampling procedure to ensure that each portion and component of the product within a lot/sublot is checked against the label transmitted.

* Raw weights—The weight is checked on all portions and components on finished raw and cooked products.

* Cooked weights—Cooked weights are checked and compared with the portion size stated on the transmittal

and on the Child Nutrition (CN) label. Weights also are checked for precooked components of products against information on the label transmittal.

* The sampling plans and tolerances should be based on generally recognized statistical process control methods and should ensure that the process is in control and that applicable product or label limits are being met.

* Each CN product should have its own lot average.

Batter and Breading (if applicable)

* Establish a procedure to verify that the batter/breading application does not exceed regulatory limits, label declarations, or product standards. The monitoring procedure should identify the following:

** pre-batter/breading application weight

** sample size

** sample frequency

** post-batter/breading application weight

* Post-batter/breading weight should be determined at the end of the application procedure and before further processing. Note: Model also can be used in developing the following PQC programs:

Batter and Breading

FES Labeling Content for Meat and Non-Meat Products

Precooked Breakfast Sausage Yield Control

*Model 3.* Low Temperature Rendering for the Production of Partially Defatted Chopped (P.C.) Beef/Pork, Fat-Reduced Species, and Partially Defatted Beef/Pork Fatty Tissue

Raw Materials Control

* Define a lot and sublot

* If producing P.C. beef/pork or fat-reduced species, establish a statistically based sampling procedure to ensure the lot is in compliance with raw material requirements (12 percent lean).

Heat Processing

* Identify processing temperature (minimum and maximum).

* Identify the target processing time, which is the time the product is subjected to the target.

* Establish procedures for monitoring processing temperatures and times.

Cooling and Freezing Controls

* Identify the cooling and freezing temperatures for the finished product.

* Identify the amount of time the cooling and freezing process will take to reach established temperatures.

Microbiological

* If the cooling/freezing process (starting from the time heat is applied until the product is 40 degrees F for less) exceeds 30 minutes, a microbiological sampling procedure should be developed. The following sampling procedures and limits have been used in PQC programs in the past, and current regulations permit their continued use.

** Using a statistically based sampling plan, select two samples per lot from the raw material and finished products.

** Test samples for total plate count, coliforms, *E. coli,* and *C. Perfringens.*

** Demonstrate that the process does not increase the product's microbial load by 1 log or more.

** Sampling can be reduced to one per lot when control has been demonstrated in three consecutive lots.

Finished Product Controls

* If producing finely textured lean or finely textured extra lean, product should be tested for fat, protein, and protein efficiency ratio (PER) or essential amino acid (EAA).

* Incorporate the sampling procedure for fat and protein.

** Individual—Obtain a one-pound sample from each lot. After 10 consecutive analyses are in compliance with single sample limits, sampling may be reduced to one randomly sampled lot out of every three lots.

** Process Average—A process (moving) average of 10 lots should be maintained.

Sampling Procedures for PER/EAA

* Initially, each lot should be held and tested until compliance has been established. Once compliance has been established in three consecutive lots, sampling may be reduced. Sampling frequency should begin with at least one sample per month until compliance has been established. When three consecutive samples are in compliance, the frequency may be reduced to one sample every three months.

* Analytical Standard Limits

*Finely Textured Lean Product*

*Individual;*

Fat—Maximum 30%

Protein—Minimum 13%

*Process Average:*

Fat—Maximum 30%

Protein—Minimum 14%

PER 2.5 or

EAA 33%

*Finely Textured Extra Lean Similar Products*

*Individual:*

Fat—Maximum 11%

Protein—Minimum 13%

*Process Average:*

Fat—Maximum 10%

Protein—Minimum 14%

PER 2.5 or

EAA 33%

Corrective and Preventive Actions

* Develop corrective and preventive actions for each critical check point established.

**Note:** Model also can be used in developing the following PQC programs:

Low Temperature Rendering for Control of Partially Defatted Chopped Beef/Pork Fat-Reduced Species and Partially Defatted Beef/Pork Fatty Tissue

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 303, 308, 381, and 416

[Docket No. 96–037P]

## Sanitation Requirements for Official Meat and Poultry Establishments

**AGENCY:** Food Safety and Inspection Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to revise its regulatory requirements concerning sanitation in official meat and poultry establishments. Specifically, FSIS is proposing to consolidate the sanitation regulations into a single part applicable to both meat and poultry establishments, eliminate unnecessary differences between the meat and poultry sanitation requirements, and convert many of the highly prescriptive requirements to performance standards.

**DATES:** Comments must be received on or before October 24, 1997.

**ADDRESSES:** Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #96–037P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th St. SW, Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 205–0699.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 29, 1995, FSIS announced that it had begun a comprehensive review of its regulatory procedures and requirements to determine which were still needed and which ought to be modified, streamlined, or eliminated (FSIS Docket No. 95–008A, "FSIS Agenda for Change: Regulatory Review"; 60 FR 67469–67474). This ongoing review is an integral part of the FSIS initiative to improve the safety of meat and poultry products by modernizing the Agency's system of food safety regulation. Further, this review and the resulting regulatory revisions reflect the Agency's commitment to achieving the goals of the President's Reinvention of Government initiative: to have fewer, clearer, and more user-friendly regulations.

In the course of its review, FSIS identified the need to revise its sanitation requirements for official meat and poultry establishments. A number of the existing sanitation requirements are difficult to understand, redundant, or outdated. Also, there are unnecessary differences between the sanitation requirements for meat and poultry establishments. Further, some of the existing sanitation requirements are no longer needed in light of the Agency's recently finalized Hazard Analysis and Critical Control Point (HACCP) and Sanitation Standard Operating Procedure (SOP) requirements. Finally, some of the current sanitation regulations are unnecessarily prescriptive, may impede innovation, and blur the distinction between establishment and inspector responsibilities for maintaining sanitary conditions.

Therefore, FSIS is proposing in this document to revise its sanitation regulations. FSIS is proposing to clarify and consolidate the sanitation requirements for meat and poultry establishments, eliminate unnecessary differences between those regulations, make the existing sanitation regulations more compatible with the HACCP and sanitation SOP requirements, and convert prescriptive requirements to performance standards.

*Sanitation*

Proper and effective sanitation practices and conditions are an essential part of all safe food manufacturing processes. Insanitary facilities and equipment and poor food handling and personal hygiene practices by employees create an environment in which pathogens and other food safety hazards can contaminate and adulterate products. Consequently, proper sanitation is a fundamental requirement under both the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA).

The FMIA and the PPIA authorize the Secretary of Agriculture to promulgate regulations regarding sanitary practices in official establishments. Meat and poultry product produced, packed, or held under insanitary conditions, where they may have become contaminated with filth or may have been rendered injurious to health, are deemed adulterated. Furthermore, if meat and poultry products consist in whole or in part of any filthy, putrid, or decomposed substance, or for any other reason are unsound, unhealthy, unwholesome, or otherwise unfit for human food, they are deemed to be adulterated.

While sanitation has improved greatly throughout the meat and poultry industries over the years, many individual establishments still have difficulty maintaining the required sanitary conditions. In fact, poor sanitation is the most frequently observed problem in meat and poultry establishments. Between September 1993 and February 1995, the Food Safety and Inspection Service (FSIS) conducted unannounced reviews of 1,014 federally inspected meat and poultry establishments, observing operations and noting deficiencies. More than 60 percent of all deficiencies documented by these reviews involved establishment sanitation. Data collected through FSIS's Performance Based Inspection System similarly documents that sanitation is the most frequent deficiency noted by inspection personnel in routine establishment visits.

FSIS inspectors examine the conditions under which meat and poultry products are produced at official establishments. Until the recent implementation of Sanitation Standard Operating Procedure (SOP's) requirements, FSIS enforced sanitation requirements primarily through a combination of prescriptive sanitation regulations, detailed guidance materials, and direct, hands-on involvement by inspectors in day-to-day pre-operational and operational sanitation procedures in establishments. This system achieved sanitation goals on a daily basis in individual establishments, but encouraged establishments to shift accountability for sanitation to the FSIS inspector.

To make establishments appropriately accountable for food safety, including the maintenance of sanitary conditions, the Agency recently finalized major changes to the meat and poultry regulations (FSIS Docket No. 93–016F, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems"; 61 FR 38806). Under these new regulations, every official meat and poultry establishment will be required to develop and implement HACCP, a science-based process control system designed to improve the safety of meat and poultry products. Establishments will be responsible for developing and implementing HACCP plans incorporating the controls necessary and appropriate to produce safe meat and poultry products. At the same time, HACCP is a flexible system that enables establishments to tailor their control

systems to the individual needs of their particular plants and processes.

FSIS also has required all official establishments to develop, implement, and maintain written Sanitation Standard Operating Procedures (SOP's). Sanitation SOP's must describe all procedures an official establishment conducts daily, before and during operations, to prevent direct contamination or adulteration of product(s). The format and content of Sanitation SOP's are not specified in the final regulations; so, as under HACCP, each meat and poultry establishment must analyze its own operations and identify possible sources of direct contamination or adulteration that need to be addressed in its Sanitation SOP's.

Effective establishment sanitation through the development and implementation of written Sanitation SOP's is essential to improve food safety and for the successful implementation of HACCP. Establishment compliance with the Sanitation SOP requirements will not only substantially minimize the risk of direct product contamination or adulteration, but also will improve the utilization of FSIS inspection resources by refocusing sanitation inspection on the oversight of establishment prevention and correction of conditions that cause direct product contamination or adulteration.

*Performance Standards*

For the HACCP and SOP requirements to be successful, FSIS believes it must reduce its reliance on detailed, command-and-control regulations. Command-and-control regulations prescribe step-by-step procedures establishments must use toward the goal of safe meat and poultry products. Such regulations can be incompatible with HACCP and the SOP requirements to the extent that they deprive establishments of the flexibility to innovate and deter them from assuming their full share of responsibility for food safety.

FSIS is engaged in a thorough review of its current regulations and, where possible, will eliminate overly prescriptive regulations and replace them with regulations that embody performance standards. Such regulations establish requirements in terms of the objective to be achieved. They specify the ends, but do not detail the means to achieve those ends. Adopting performance standards for meat and poultry products would allow establishments to develop and employ innovative and more effective sanitation or processing procedures customized to the nature and volume of their production.

FSIS also believes that the existing sanitation regulations may interfere with efforts to implement the Sanitation SOP requirements of the final Pathogen Reduction/HACCP regulation. Commenters on the proposed HACCP rule expressed their concerns about the layering of new Sanitation-SOP requirements over existing regulations. These concerns have merit. The Agency indicated in the Preamble to the Final Pathogen Reduction/HACCP regulation that "its existing sanitation regulations contain some detailed and prescriptive provisions and that some of these regulations may be outmoded and no longer needed in light of the Agency's effort to clarify that good sanitation is the responsibility of each establishment." The Agency also stated that it "* * * will continue to review, re-evaluate, and revise, as necessary , all current sanitation regulations, along with related issuances and sanitation inspection procedures, to simplify and streamline them and make them more compatible with Sanitation SOP requirements." In addition, at recent implementation conferences held in Washington and at six cities across the country, participants raised questions about the relationship between existing requirements and the new Sanitation SOP's.

Accordingly, FSIS is proposing to convert all of its sanitation requirements to performance standards. The proposed performance standards regarding the general sanitary conditions of an establishment would provide meat and poultry establishments with the maximum possible flexibility to innovate in facility design, construction, and operations, and allow them to tailor Sanitation SOP's to their particular circumstances. Furthermore, many of the current sanitation regulations requiring that equipment or operations be approved prior to use (such as trap and vent approval requirements in §§ 308.3(c) and 381.49(c)(1)) would be eliminated.

*Explanation of the Proposed Sanitation Performance Standards*

FSIS is proposing to replace all of the current sanitation regulations in 9 CFR Parts 308 and 381, Subpart H, with a single set of consolidated performance standards in new Sections 416.1 through 416.6. This is a comprehensive revision; the relationship between the current requirements and the proposed performance standards is complex. Therefore, FSIS has developed the following chart to illustrate how current sanitation requirements correspond to the proposed performance-based regulations. A description of the requirements(s), along with regulatory citations for the current and proposed regulations are given. Notably, FSIS is proposing to eliminate many of the current prescriptive sanitation requirements and replace them with a single performance standard for general sanitation. Following the chart is a more detailed explanation of the proposed revisions.

| Subject | Proposed regulation | Current regulation(s) |
|---|---|---|
| General sanitation | § 416.1 | §§ 308.3(a), (g), 308.7, 381.45, 381.57; and all other provisions not listed below. |
| Establishment grounds and pest management | § 416.2(a) | §§ 308.3 (h), 308.13, 381.49(b), 381.56(a), 381.59, and 381.60. |
| Establishment Construction | § 416.2(b) | §§ 308.3(e), (f), (h), 381.46, 381.47 and 381.48. |
| Light | § 416.2(c) | §§ 308.3(b), 381.52 (a) and (b). |
| Ventilation | § 416.2(d) | §§ 308.3 (b) and (g), 308.8(b), 381.52 (a) and (c). |
| Plumbing | § 416.2(e) | §§ 308.3(c), 381.47(b), 381.49 (a), (b) and (c). |
| Sewage disposal | § 416.2(f) | §§ 308.4(c) and 381.49(c)(4). |
| Water supply and reuse | § 416.2(g) | §§ 308.3(d), 381.50 and 381.53(k). |
| Ice and solution reuse | § 416.2(h) | FSIS policy (explained below). |
| Dressing rooms, lavatories, and toilets | § 416.2(i) | §§ 308.4 (a), (b), (d), 381.47(h), 381.51 and 381.53(c). |
| Equipment and utensils | § 416.3 | §§ 308.5 (a) and (g), 308.6, 308.8(c), 308.16, 381.53(a)(1), (f), (g), (h), (i), (j), (k), (l), (m), 381.54, 381.55 and 381.56(b). |
| Food-contact surface cleaning and sanitation | § 416.4(a) | §§ 308.3(d)(4), 308.7, 308.8(a), 381.57 and 381.58. |
| Non-food-contact surface cleaning and sanitation | § 416.4(b) | §§ 308.3(d)(4), 308.7, 308.8(a), 381.57 and 381.58. |
| Cleaning compounds and sanitizers | § 416.4(c) | § 381.60. |

| Subject | Proposed regulation | Current regulation(s) |
|---|---|---|
| Operational sanitation | § 416.4(d) | §§ 308.3(g), 308.7, 308.8(a), 308.9, 308.10, 308.11, 308.12, 381.47(e), 381.53(d),(e), and (g)(4). |
| Employee hygiene | § 416.5(a) | §§ 308.8(c),(e), 381.47(i), 381.51(g), 381.61(b),(c), and (d). |
| Employee clothing | § 416.5(b) | §§ 308.8(d) and 381.61(b). |
| Employee disease | § 416.5(c) | §§ 308.14 and 381.61(a). |
| Tagging insanitary equipment, rooms, or compartments | § 416.6 | §§ 308.15 and 381.99. |

*The Proposed Regulations*

This proposed rule would significantly reduce the number of sanitation regulations and consolidate the sanitation requirements for meat and poultry into part 416. This consolidation would not only simplify the sanitation regulations for the user, but also would establish uniform sanitation performance standards that would provide flexibility to establishments while maintaining the rigorous sanitation standards necessary to ensure food safety. The establishment's responsibility for maintaining sanitary conditions and preventing the contamination and adulteration of product would remain unchanged. Further, in consolidating the sanitation regulations, FSIS would eliminate the unnecessary differences between the current sanitation requirements for meat and poultry establishments. In the following, FSIS has provided brief descriptions of the proposed sanitation performance standards accompanied by examples of current regulations they would replace.

*General Sanitation—416.1*

The current sanitation regulations for meat and poultry require in general that rooms, compartments, and other parts of the official establishment be kept clean and sanitary. New § 416.1 sets out similar requirements, but as a performance standard: "Each official establishment must be operated and maintained in sanitary manner sufficient to ensure that product is not contaminated, adulterated, or misbranded." As discussed above and illustrated by the chart, FSIS is proposing to eliminate many of the current sanitation requirements and replace them with this single performance standard for general sanitation. Examples of current requirements to be replaced by the general standard are: §§ 308.3(i) and 381.59, concerning dogs, cats, and other animals on establishment premises; § 308.8(f), concerning equipment that generates gases or odors in meat establishments; and § 381.47 paragraphs (f) and (g), concerning general sanitary conditions in poultry establishment storage and boiler rooms.

*Establishment Grounds and Pest Management—§ 416.2(a)*

The current requirements for facility grounds are somewhat prescriptive and inconsistent. For example, § 308.13 requires that outer premises of every official meat establishment be properly paved and drained and kept in clean and orderly condition. However, the counterpart regulation in § 381.56(a) concerning the outside premises of poultry establishments does not require grounds to be paved. The proposed performance standard would eliminate this inconsistency while clarifying and retaining the intent of the current requirements: that grounds be maintained to prevent conditions that could lead to the contamination or adulteration of product or prevent FSIS program employees from performing assigned tasks.

The current requirements for pest control on establishment grounds and within establishments place much of the responsibility for pest control on the Agency. For example, §§ 308.3(h) prohibits the use of poisons for the control of pests in rooms or compartments where unpackaged product is stored or handled, unless approved in the regulations or by the circuit supervisor. Similarly, the regulations in § 381.60 prohibit the use of pest control substances in poultry establishments unless approved by the Administrator.

The proposed performance standard preserves the intent of the current requirement: establishments must implement and maintain an integrated pest control program to eliminate the harborage and breeding of pests on the grounds and within the establishment facilities and must safely and effectively use any interventions, such as pesticides, fumigants, and rodenticides. The proposed standard would eliminate requirements that pest control substances be approved by FSIS prior to use.

Finally, current § 308.3(h) specifically prohibits the use of "so-called rat viruses" in meat establishments. FSIS has determined that this prohibition is obsolete and therefore is proposing to delete it.

*Establishment Construction—416.2(b)*

The requirements concerning construction of poultry establishments are more prescriptive than the comparable requirements for red meat establishments. For example, § 381.47 prescribes numerous, specific requirements for the different areas within a poultry establishment, e.g., refuse rooms, rooms for holding carcasses for further inspection, coolers and freezers, rooms for mechanical deboning of raw poultry, storage and supply rooms, boiler rooms, toilet rooms, and lunch rooms. There are no equally prescriptive requirements in § 308.3 (e), (f), and (h) of the red meat regulations. The proposed performance standards in § 416.2(b), which set forth general requirements for construction applicable to both meat and poultry establishments, would eliminate the existing inconsistency.

The proposed performance standards allow for increased flexibility in regard to establishment construction and maintenance. FSIS recommends that establishments consult the Food and Drug Administration Food Code when designing, building, or maintaining facilities. The Food Code provides useful guidance on how to safely process and prepare food. Although the Food Code is neither federal law nor federal regulation and does not preempt state or local laws, local, state and federal regulators use the FDA Food Code as a model to help develop or update their own food safety rules and to guide the development of a consistent national food regulatory policy. Similarly, establishment operators also should consult the various national building and construction codes and standards. Such materials provide additional guidance concerning the design, construction, and maintenance of sanitary meat and poultry establishments.

Also, in a related document published in the **Federal Register** on May 2, 1996, FSIS proposed to eliminate current

requirements for prior approval by FSIS of establishment drawings, specifications, and equipment prior to their use in official establishments (FSIS Docket No. 95–032P; 61 FR 19587–19590). These amendments, like the proposed sanitation performance standards, would provide the regulated industry with the flexibility to design facilities and equipment in the manner they deem best to maintain the required sanitary environment for food production.

*Light—416.2(c)*

Currently, the lighting requirements for poultry establishments in § 381.52 prescribe specific light intensities for different areas of the establishment. For example, in paragraph (b) of this section, FSIS requires that all rooms in which poultry is killed, eviscerated, or otherwise processed have 30-foot candles of light intensity on all working surfaces. The comparable regulations for red meat establishments in § 308.3(b) do not contain such specific requirements, stating only that meat establishments must have "abundant light, of good quality and well distributed." Nevertheless, the intent of the current lighting requirements is the same for both meat and poultry establishments: there must be enough light of adequate quality to monitor sanitary conditions and processing operations and to examine product for evidence of contamination, adulteration, or misbranding. Proposed § 416.2(c) would codify this intent as a single performance standard applicable to both meat and poultry establishments.

FSIS suggests that establishments consult the guidelines for light intensity contained in the Food Code. The Food Code provides useful guidance regarding necessary light intensity in food processing establishments and, in many cases, an establishment in compliance with the light intensity recommendations in the Food Code would meet the proposed performance standard for lighting.

It is important to note that FSIS is not proposing to remove from the current regulations the light intensity requirements for inspector and reprocessing stations currently set out in §§ 307.2 and 381.36. Our experience indicates that these requirements are still necessary to ensure appropriate conditions for effective inspection. FSIS will reevaluate these requirements, however, and welcomes comment on the current requirements and desirable alternatives.

*Ventilation—416.2(d)*

Currently both the red meat and poultry regulations addressing ventilation have the same basic requirements: all rooms must be sufficiently ventilated to eliminate objectionable odors and minimize moisture condensation, either of which could contaminate or adulterate product. FSIS is proposing a single performance standard based upon these current requirements and applicable to both meat and poultry establishments.

*Plumbing—416.2(e)*

The design, installation and maintenance of an adequate plumbing system is a key responsibility of the establishment. Because plumbing systems carry water into establishments and convey water, sewage, and other waste from establishments, problems with plumbing systems can easily cause product contamination or adulteration. The proposed performance standards would establish the essential condition meat and poultry establishments must achieve with their plumbing systems: plumbing systems cannot cause contamination or adulteration of product. Establishments otherwise would be allowed to build plumbing systems suitable to the nature and volume of their production. Further, prior approval requirements in the current plumbing regulations (such as the requirement in § 308.3(c) that circuit supervisors must preapprove the traps and vents installed in drains and gutters) would be eliminated.

FSIS suggests that establishments consult the National Plumbing Code published by the Building Officials & Code Administrators when designing or building a plumbing system. The National Plumbing Code is used by Federal, State, and local governments as a model for their own plumbing requirements. A plumbing system in compliance with the National Plumbing Code in most instances would meet the proposed performance standards for plumbing. Of course, establishments also should consider State and local plumbing system requirements, as well as the circumstances of their production, when designing or building a plumbing system.

*Sewage Disposal—416.2(f)*

The current requirements for establishment sewage disposal are unnecessarily prescriptive. For example, § 308.4(c) of the regulations requires sewage lines to be separate from all other drainage lines to a point outside the building and not be discharged into grease catch basins; § 381.49(c)(4) is similar, but allows for cross-connection if an automatic backwater check valve is installed. The intent of these requirements is to ensure that sewage does not back up into processing areas. However, this could be accomplished in other ways than through separate drainage lines for sewage and house drains. The proposed performance standard would maintain the requirement that sewage backup be prevented, but would allow the establishment flexibility in determining how best to prevent sewage backup.

As with plumbing, FSIS believes that the National Plumbing Code contains useful guidance for designing and building sewage systems that would satisfy the proposed regulatory requirements.

*Water supply and reuse—416.2(g)*

The current requirements regarding water supply and reuse in meat and poultry establishments (§§ 308.3(d), 381.50 and 381.53(k)) are similar, though not identical. In general, both meat and poultry establishments are required to have water supplies that are "ample, clean, and potable, with adequate facilities for its distribution * * * and protection against contamination and pollution." Neither meat nor poultry establishments may use nonpotable water in areas where edible product is processed or handled and the use of nonpotable water is limited to specific areas and equipment. Further, in both meat and poultry establishments, potable water lines may not be cross-connected with nonpotable water lines, unless necessary for fire protection and approved by both FSIS and local authorities.

Restrictions on the reuse of water also are similar for both meat and poultry establishments. A few permitted "reuses" are specified, one in common for both meat and poultry being the reuse of water to thermally process canned product packed in hermetically sealed containers. Any other water reuse must be for the identical original purpose and must be approved by FSIS.

Finally, both the meat and poultry regulations require that an adequate supply of hot water be available for cleaning rooms and equipment.

There are a few differences between the water supply and reuse regulations for meat and poultry establishments. Under § 308.3(d)(4), meat establishments are required to have an ample supply of water of at least 180° F for cleaning equipment, floors, and walls subject to contamination by diseased meat carcasses. There is no similar requirement for poultry establishments. Because there are

substantive and material questions about the efficacy of the 180° F water for sanitization, the Agency is proposing to eliminate the requirement (see the discussion below under "*Equipment and Utensils—416.3*").

Also, under § 381.50(d), FSIS specifically requires that poultry establishment refuse rooms "be provided with adequate facilities for washing refuse cans and other equipment in the rooms." There is no such specific requirement for meat establishments. Finally, under § 381.50(a), FSIS requires that poultry establishments obtain a water report issued under the authority of a State health agency, certifying potability, and furnish this report to FSIS upon request. Although there is no such regulatory requirement for meat establishments, FSIS believes that all meat establishments do obtain such certificates.

Proposed § 416.2(g) consolidates water supply and reuse requirements for both meat and poultry into a single section. The proposed performance standards are based on the current regulations, as well as policies found in FSIS policy documents. Also incorporated are water reuse performance standards generated over time by industry and known to be effective in ensuring that the reuse water does not cause product contamination or adulteration.

Proposed § 416.2(g), paragraph (1), sets forth a water supply performance standard based upon the general requirements in the current regulations:

> A supply of running water that complies with the National Primary Drinking Water regulations (40 CFR Part 141), at a suitable temperature and under pressure as needed, must be provided in all areas where required (for processing product, for cleaning rooms and equipment, utensils, and packaging materials, for employee sanitary facilities, etc.). A water report, issued under the authority of the State health agency, certifying or attesting to the quality of the water supply, must be made available to the Agency upon request.

Notably, the proposed standard makes transparent a current requirement concerning potable water: that it comply with EPA National Primary Drinking Water regulations. These regulations are promulgated under Section 1412 of the Public Health Service Act, as amended by the Safe Drinking Water Act, and are applicable to public water systems. Because these regulations already apply to potable water used by meat and poultry establishments, the reference in the proposed performance standards would not constitute a new requirement.

The proposed performance standard also restates the current requirement that establishments must make available to FSIS, upon request, State certificates attesting to water quality. The performance standard clarifies that this requirement applies to both meat and poultry establishments. As explained above, while currently there is no such regulatory requirement for meat establishments, it is likely that all meat establishments obtain such certificates and also that they would make them available to FSIS. FSIS believes, therefore, that this provision would not impose a new requirement upon meat establishments.

Proposed § 416.2, paragraphs (g) (2) through (6) set forth performance standards for the reuse of water in meat and poultry establishments. As explained above, the regulations currently permit water to be reused only under certain circumstances and require that any other reuse be approved by the Agency in advance. The proposed performance standards are intended to account for every allowable water reuse situation and eliminate the need for prior approval.

The meat and poultry industries need great quantities of water for processing products and for cleaning. Water and water based (aqueous) solutions are widely used for product formulation, slaughter, cooking, cooling the equipment, and chilling products as well as for cleaning and sanitization. Reuse of water and solutions, therefore, can offer significant economic advantages.

Historically, FSIS and other public health agencies have required that only potable water be used in the production of meat and poultry products. However, over the past 20 years the Agency has recognized that reuse water, which does not meet all of the EPA requirements for potability, may be used safely and effectively in certain processing situations. In the early 1990's EPA, FDA, and FSIS representatives agreed that current technology will allow for the reconditioning of water for safe and effective reuse in various applications.

Reuse water can be treated to render it free of physical, microbiological, and chemical hazards. Some of the general treatment options used include: filtration, chlorination, ozonation, ultraviolet (UV) radiation, and heating. Use of these procedures can usually return water to a level of quality appropriate to its intended use. After treatment, however, such water should be tested regularly to assure continual freedom from biological, chemical, or physical hazards.

Depending upon the original use, the intended reuse, and the duration of reuse, a wide range of acceptable microbiological, chemical, or physical contaminant levels are possible in reuse water. The previous degree of exposure or potential exposure to contaminants dictates the appropriate reconditioning treatment and the allowable reuse. FSIS has based its proposed performance standards for water reuse on these factors.

Proposed § 416.2(g), paragraph (2) states:

> Water used to chill or cook ready-to-eat product may be reused for the same purpose, provided that measures are taken to ensure that it is maintained free of pathogenic organisms and fecal coliform organisms and that other physical, chemical, and microbiological contamination is reduced so as to prevent contamination or adulteration of product.

FSIS expects establishments to produce ready-to-eat products that are free of pathogens; therefore, FSIS is proposing to require that reuse water used to chill or cook ready-to-eat product be free of pathogens. FSIS is proposing to require that this reuse water be free of fecal coliforms because their presence would indicate that the water was contaminated, possibly with pathogenic organisms. Finally, FSIS is proposing that other types of contamination be reduced sufficiently to prevent contamination or adulteration of product.

Paragraph (4) of this proposed section states:

> Water used to chill or wash raw product may be reused for the same purpose provided that measures are taken to reduce physical, chemical, and microbiological contamination so as to prevent contamination or adulteration of product. Reuse water which has come into contact with raw product may not be used on ready-to-eat product.

FSIS is proposing to require that physical, chemical, and microbiological contamination be reduced to minimize the risk of cross-contamination in general. FSIS also is proposing to require that water used to chill or wash raw product be reused only for the same purpose to minimize the possibility of cross-contamination between different types of products or processes. Because raw product often is initially contaminated with pathogenic microorganisms and fecal coliforms, FSIS is not proposing to require that this reuse water be free of those contaminants. Finally, FSIS is proposing to prohibit water which has come into contact with raw product from being used on ready-to-eat product so as to prevent the cross-contamination of ready-to-eat product by contaminants

or adulterants from raw product. Current regulations mandating the separation of raw and ready-to-eat product serve the same purpose.

Proposed paragraph (4) applies to meat or poultry establishments that recondition their water through an advanced wastewater treatment facility, usually either onsite or under contract. Such water meets the criteria prescribed in National Primary Drinking Water regulations (40 CFR part 141) concerning water quality. It cannot be considered "potable," however, because it would not originate from the best available source. The best available source would most often be a municipal water system.

Because this reconditioned water is of such high quality, FSIS is proposing to allow it to be used "on raw product, except in product formulation, and throughout the facility in edible and inedible production areas." Notably, to prevent establishments from using water from sewage lines, FSIS would not allow this water to ever have contained human waste. Further, FSIS is proposing to require that "product, facilities, and equipment coming in contact with this water must undergo a separate final rinse with non-reconditioned water that meets the criteria prescribed in paragraph (g)(1) of this section." This requirement, as well as the prohibition against the use of this water in product formulation, are redundant safeguards, already accepted by industry. They serve to further prevent contamination or adulteration of product. It is likely that establishments would use the reuse water described in this provision to wash equipment, floors, and carcasses on the kill floor, all of which can easily be rinsed.

Proposed paragraph (5) of this section permits any water to be used for any purpose in edible or inedible product areas, provided that it has never contained human waste, has been conditioned to be free of pathogenic organisms, and does not contact edible product. FSIS is proposing to require that this reuse water never have contained human waste to prevent establishments from using water from sewage lines. FSIS is proposing to require this reuse water to be reconditioned until free of pathogenic organisms to prevent the spread of pathogenic organisms throughout an establishment, which could lead to cross-contamination of product. Finally, because this reuse water may contain fecal coliforms or chemical or physical contaminants, FSIS is proposing to prohibit it from contacting edible product.

Finally, proposed paragraph (6) states that any water not meeting the conditions of § 416.2(g) paragraphs (1) through (5) may not be used, except in areas where no edible product is handled or prepared and may not be used in any manner which would allow it to contaminate or adulterate edible product.

*Ice and Solution Reuse—416.2(h)*

Similarly, FSIS is proposing to codify performance standards for ice and solution reuse taken from Agency policy statements (e.g. FSIS Directive 7110.4, "Liquid Smoke Re-Use" and "MPI Bulletin 83–16, "Reuse of Water or Brine Cooling Solutions on Product Following a Heat Treatment") and accepted industry practices known to ensure that reused ice or solutions do not contaminate or adulterate product. The proposed standards for reuse of ice or solutions in § 416.2(h) are similar to those proposed for water reuse.

The performance standards proposed for reuse of ice or solutions on ready-to-eat product (§ 416.2(h)(3)) serve the same purpose as those proposed for water reuse on ready-to-eat product (§ 416.2(g)(5)). The proposed performance standards for reuse of ice or solutions on raw or partially-cooked product (§ 416.2(h)(4)) are slightly different than those proposed for water reuse on raw products (§ 416.2(g)(4)). Unlike the corresponding requirements for water reuse, ice or solutions from any source may be reused to chill raw or partially-cooked product. To minimize the possibility of cross-contamination between different types of products or processes, FSIS is proposing that such ice be free of fecal coliforms, which indicate contamination.

*Dressing Rooms, Lavatories, and Toilets—416.2(i)*

Certain current regulations concerning dressing rooms, lavatories, and toilets in poultry establishments are highly prescriptive. For example, § 381.51(h) prescribes the exact number of toilet bowls that should be installed within an establishment based on the number of people employed, the intent being to ensure that establishments provide an adequate number of toilet bowls, thus maintaining related sanitary conditions. The proposed performance standards would give meat and poultry establishments the responsibility and flexibility to determine how many dressing rooms, lavatories, and toilets it needs. Of course, establishments would have to meet any applicable State and local codes concerning the number of lavatories and toilets in the workplace.

Also, the current regulations for dressing rooms, lavatories, and toilets include requirements already present in other sections of the sanitation regulations. For example, ventilation is addressed in §§ 308.3(b), 308.4(a), and 308.8(b). The proposed, unified regulations eliminate such redundancies.

*Equipment and Utensils—416.3*

The current regulations concerning equipment and utensils are unduly prescriptive and can deprive establishments of the flexibility to innovate in regard to equipment and utensil sanitation. The proposed performance standards not only provide flexibility, but also clarify establishment responsibility for selecting and maintaining equipment and utensils in a manner that effectively prevents product contamination or adulteration:

> Equipment and utensils used for processing or otherwise handling edible product or ingredients must be of such material and construction to facilitate thorough cleaning and ensure that product is not contaminated, adulterated, or misbranded during processing, handling, or storage. Equipment and utensils must be maintained in sanitary condition so as not to contaminate or adulterate product.

FSIS also is proposing to eliminate § 308.8(c) of the regulations which requires that all implements used in dressing diseased meat carcasses be cleaned either with hot water having a minimum temperature of 180° F or a disinfectant approved by the Administrator and that they then be rinsed in clean water. This requirement, and the 180 °F water requirement specified in § 308.3(d)(4), are intended as sanitization steps, effecting a reduction in microbial levels on areas subject to contamination.

However, research has raised questions about the efficacy of the 180 °F requirement. When there is organic matter present on equipment, such as that which would occur during slaughter or processing operations at meat or poultry establishments, the length of time necessary to achieve disinfection can be variable. Additionally, sometimes disinfection may not be achieved since hot water can bake organic material onto a surface, impeding the penetration of the water and diminishing the efficacy of the hot water disinfection.[1, 2]

[1] Peel, B., and Simmons, G.C. (1976) *Contamination of Knives as a Means of Spread of Salmonellae in Meatworks.* Proceedings of the Annual Conference of the Australian Veterinary Association, 53: 38–39.

[2] Peel, B., and Simmons, G.C. (1978) *Factors in the Spread of Salmonellae in Meatworks with*

Research also indicates that maintaining the temperature of a water spray from the nozzle to a surface is quite different from immersion of utensils in an 180 °F water bath. Husband and McPhail [3] studied the specific effects of the use of sprayed 180 °F water for cleaning boning rooms in Australia. Initial measurements of water temperature along a sprayed stream indicated that water temperature dropped rapidly with distance from the nozzle. If the initial temperature at the nozzle was 180 °F, the temperatures recorded at 1, 2, and 3 meter points along the water stream were 176 °F, 169 °F, and 163 °F respectively. A maximum temperature of only 127 °F was obtained at the boning table surface when water at an initial nozzle temperature of 180 °F was sprayed at a distance of one meter. Fogging, which results in undesirable condensation, was subjectively judged to be severe whenever nozzle temperatures exceeded 149 °F in a boning room with an initial ambient temperature of 50 °F.

Husband and McPhail [4] also claimed that water at 120 °F nozzle temperature was as effective as water at 180 °F nozzle temperature in reducing bacterial numbers on flat uncleaned and unsanitized surfaces to low levels of 40–75 cfu per 5 $cm^2$. These results were applicable for bacteria originating from meat smears or from dried-on suspensions of broth cultures. However, they concluded that rinse water at 131–138 °F nozzle temperature is the most suitable for all stages of an effective cleaning and sanitization procedure. This conclusion was reached in consideration of the fact that residual fat is effectively removed, fogging and its resulting condensation is reduced, and energy is conserved. The authors assert that bacteriological reduction of at least 5 logs from flat stainless steel surfaces was expected after effective cleaning and sanitization, irrespective of rinse water temperature.

Attempts to "disinfect" with chemical agents or 180 °F water are of limited value unless the surfaces are first thoroughly cleaned of organic residue such that the bacteria are not protected by film. Weise and Levitzow [5] demonstrated that cleaning surfaces in slaughterhouses with just 180 °F water caused coagulation of protein. Protein and fat remained on the examined metal, plastic, and ceramic tile surfaces. They recommended 165 °F water for 30 seconds to clean, but not disinfect, these surfaces in slaughterhouses.

In the 1970's, the need for energy conservation created interest in the use of chemical disinfectants in lieu of 180 °F water. While the Environmental Protection Agency (EPA) registers disinfectants under the Federal Insecticide, Fungicide and Rodenticide Act primarily for hospital use, there was concern within FSIS about whether such chemical disinfectants would ensure adequate disinfection of surfaces and equipment in meat and poultry plants, where pathogens such as tuberculosis may be present. FSIS developed a program to enable disinfectant manufacturers to apply for approval of disinfectants and for meat and poultry plants to apply for use of approved compounds in lieu of 180 °F water. The requirements were published in MPI Bulletin 77–34 (3–16–77). At this time, there are no disinfectants that meet the criteria of MPI Bulletin 77–34 and its goals. The EPA does not have a category of disinfectants specifically for use in meat and poultry plants. FSIS has since contacted EPA and requested that EPA identify hospital disinfectant(s) that might be suitable for use in red meat and poultry plants.

Therefore, because the efficacy of the 180 °F water requirement is questionable, the Agency is proposing to remove the specific requirements for the water temperature from § 308.8(c) of the regulations. The proposed performance standard also would replace other prescriptive sanitation requirements for equipment and utensils, such as the requirements in § 308.16 concerning electrical stimulating equipment and the requirements in § 381.53(f) concerning the construction of ice shovels used in poultry establishments.

FSIS also is proposing that this performance standard replace the prohibitions against equipment and utensils containing certain concentrations of liquid polychlorinated biphenyls (PCB's) in §§ 308.5(g) and 381.56(b). The new standard would effectively prohibit the use of any equipment or utensils that could lead to product contamination by PCB's.

*Food-Contact Surface Cleaning and Sanitation—416.4(a)*

In general, current Agency policy requires that establishments clean food contact surfaces daily. However, not all of the pertinent current meat and poultry regulations state that equipment, utensils, and rooms be maintained in a sanitary manner. Proposed § 416.4(a) clarifies and codifies Agency policy regarding daily cleaning:

> All food-contact surfaces, including food-contact surfaces of utensils and equipment, must be cleaned daily prior to starting operations and as frequently as necessary so that they are free of physical and chemical contamination and so that microbiological populations are reduced so as to prevent contamination or adulteration of product.

This proposed performance standard also clarifies the intent of the Sanitation SOP regulations in § 416.2(c), which require establishments to develop and implement SOP's that address the cleaning of food contact surfaces, equipment, and utensils.

The objective of food-contact surface cleaning requirements has always been to mitigate physical, chemical, and microbiological contamination that could contaminate or adulterate product. The proposed performance standard codifies this objective and clarifies establishment responsibility for determining how best to achieve it.

Some of the current regulations regarding food-contact surface cleaning are prescriptive and limit innovation by the establishment. For example, § 381.58(g) requires that all conveyor trays or belts which come into contact with raw poultry products be completely washed and sanitized after each use. The intent of this requirement is to minimize the growth of microorganisms on the food contact surface. There may be other more efficient procedures that would accomplish this objective, however, that are not allowed by the current requirements. The proposed performance standard would allow establishments to clean "as frequently as necessary." Additionally, the current requirement in § 381.58(g) is not applicable to cutting boards used for poultry products, or conveyors and trays used for red meat products. The proposed performance standard also would remove this inconsistency and others like it.

*Non-Food-Contact Surface Cleaning and Sanitation—416.4(b)*

FSIS also is proposing to replace the current regulations concerning the cleaning and sanitation of non-food-contact surfaces with a performance standard. For example, § 308.3(d)(4) now requires that meat establishments use 180 °F water for cleaning of floors, and walls which are subject to contamination by the dressing or handling of diseased carcasses, their viscera, and other parts. The intent of

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*Special Reference to Contamination of Knives.* Australian Veterinary Journal 54: 106-110.

[3] Husband, P. And McPhail, N.G. (1978) *The Use of 82 °C Water in Meat Plant Cleaning Operations.* CSIRO Meat Research Report No. 2/78. Commonwealth Scientific and Industrial Research Association.

[4] Ibid.

[5] Weise, E., and Levitzow , R. (1976) *Is 82 Degree C the Optimum Water Temperature for Cleaning Slaughterhouses?* Fleischwirtschaft 56(12): 1725–1728.

this regulation is to require establishments to keep floors and walls free of any physical contaminants (soil, tissue debris), chemical contaminants or biological contaminants that could contaminate or adulterate a meat and poultry product. The requirement to prevent contamination or adulteration is retained in the proposed performance standard, but without the 180 °F water provision. This gives establishments greater flexibility and responsibility for developing sanitary procedures specific to the nature of their operations and the food safety hazards which might occur.

*Cleaning Compounds and Sanitizers—416.4(c)*

The current regulations in § 381.60 require that FSIS approve cleaning compounds and sanitizers before they can be used within an official poultry establishment. FSIS policy has been to enforce this requirement in meat plants as well. The requirement is intended to ensure that meat and poultry products are not contaminated or adulterated with chemicals or any injurious substance. We are proposing to replace this requirement with a performance standard that would specify that "cleaning compounds and sanitizing agents used must be safe and effective under the conditions of use and their use must not cause the contamination or adulteration of product." Of course, establishments would still have to meet the use requirements for the substances promulgated by other regulatory agencies, such as FDA and EPA.

*Operational Sanitation—416.4(d)*

The current requirements for operational sanitation (sanitation measures carried out during operations) are spread throughout a number of regulations. For example, the requirements concerning rooms and compartments in which meat product is prepared or handled can be found in both §§ 308.3(g) and 308.7. The proposed regulations would consolidate all of the operational sanitation requirements in a single place.

Further, certain current requirements for operational sanitation are unnecessarily prescriptive. For example, current § 381.47(e) stipulates that rooms where mechanical equipment for deboning of raw poultry is operated must be maintained at 50 °F or less. This requirement is intended to limit growth of microorganisms resulting from the rise in temperature of the product as a consequence of the mechanical grinding operation. Temperatures of 50 °F or less slow the growth rate of most organisms of concern, especially *Salmonella*.

However, since this requirement was promulgated, FSIS has permitted many facilities, upon request, to use heat-exchangers connected to the grinding equipment to bring about an immediate reduction in product temperature. Heat-exchangers on the equipment can more effectively reduce product temperature and limit growth of microorganisms than the requirement to maintain room temperature.

FSIS is proposing to replace the room temperature requirement with a performance standard that will allow establishments to devise their own means for limiting microbial growth in their processing operations, without requesting special approval from the Agency. The proposed performance standard states that "Product must be protected from contamination or adulteration during processing, handling, storage, loading and unloading at and during transportation from official establishments" and that "ready-to-eat product must be protected from cross-contamination by pathogenic organisms."

Under the standard, establishments would be required to protect meat and poultry products from contamination or adulteration during all phases of production. Establishments also would be specifically required to protect ready-to-eat products from cross contamination, namely by raw product. Establishments would need not only to protect product from direct contamination, but also to control the temperature of product in order to reduce microbial growth; in many instances, FSIS considers microbial growth to be indicative of insanitary conditions. Establishments would be free to take whatever measures they believe are necessary, based upon the nature and volume of their production.

*Employee Hygiene—416.5(a)*

The current regulations mandate specific employee hygiene practices establishments must adopt. For example, the requirements in § 308.8(e) specifically prohibit employees from spitting and from placing "skewers, tags, or knifes" into their mouths. Also, § 381.51(g) states that signs must be posted in each toilet room directing employees to wash their hands before returning to work. The proposed performance standard would allow establishments to develop alternative or innovative means to ensure that employee hygiene practices do not result in product adulteration or contamination.

*Employee Clothing—416.5(b)*

Some of the current requirements regarding employee clothing are prescriptive. For example, § 308.8(d) states that work garments shall be changed during the day when required by the inspector-in-charge. The proposed performance standard would require establishments to develop acceptable policies for prescribing when "garments must be changed during the day ... to prevent contamination or adulteration of product." The other requirements of the current regulations, that garments be made of material that is readily cleaned and that clean garments be worn at the start of each day, are retained in the proposed performance standard.

*Employee Disease—416.5(c)*

The proposed performance standard regarding employee disease is similar to the current requirements. The revision would serve to consolidate regulations for meat and poultry into a single section.

*Tagging Insanitary Equipment, Rooms, or Compartments—416.6*

Similar requirements for the tagging of insanitary equipment, rooms, or compartments are found in both the meat and poultry regulations. Tagged equipment, rooms, and compartments tagged cannot be used until made acceptable. The proposed standard will not change current FSIS policy, but will consolidate requirements for meat and poultry into a single section.

FSIS is also proposing to revise § 381.99 of the poultry regulations. Section 381.99 contains both tagging provisions (which would be removed and replaced by § 416.6) and descriptions of different types of tags (which would remain in section 381.99).

*Custom Slaughter Establishments*

Under current § 303.1(a)(2)(i), establishments that conduct custom slaughter operations must meet all of the sanitation requirements contained in Part 308, with a few exceptions. Custom slaughter establishments currently are exempt from the following:

- §§ 308.1 and 308.2—prior approval requirements for sanitary conditions, drawings, and blueprints;
- § 308.3(d) (2) and (3)—water reuse restrictions;
- § 308.4—provisions requiring that establishments have separate toilet facilities for men and women (if a majority of the custom slaughter establishment's employees are related by blood or marriage and if this arrangement will not conflict with municipal or State requirements) and

provisions requiring that toilet soil lines be separate from house drainage lines to a point outside the buildings (if positive acting backflow devices are installed);

- § 308.12—restrictions regarding the use of second-hand tubs, barrels, and other containers;
- § 308.13—provisions requiring that driveways, approaches, yards, pens, and alleys be paved;
- § 308.16—sanitation requirements for electrical stimulating equipment; and
- any provisions of Part 308 relating to inspection or supervision of specified activities or other action by a Program employee.

FSIS is proposing to retain the exemptions in 303.1(a)(2)(i), but also to modify them for consistency with the proposed sanitation performance standards in new Part 416. FSIS is proposing to eliminate the requirements in § 308.1 regarding examination of sanitary conditions prior to inauguration of inspection; the requirements in § 308.4 regarding separation of toilet lines; the requirements in § 308.12 regarding the use of second-hand tubs, barrels, and other containers; the requirements in § 308.13 regarding surface paving; and the requirements in § 308.16 regarding the sanitation of electrical stimulating equipment. Therefore, the revised 303.1(a)(2)(i) would not refer to exemptions from these requirements. Similarly, in a recent proposal (FSIS Docket No. 95–032P; 61 FR 19587–19590), FSIS eliminated the requirements in § 308.2 concerning prior approval of establishment blueprints and drawings. The revised 303.1(a)(2)(i) therefore would not include an exemption from these requirements either.

*Additional Regulatory and Policy Revisions*

The comprehensive nature of this proposed rule would necessitate many changes to FSIS policy documents and regulatory references. FSIS will complete all of the needed revisions prior to the effective date of any final rule emanating from this rulemaking.

These changes fall into two categories. First, FSIS would need to revise all of the cross-references in the meat and poultry regulations to reflect the proposed deletion of §§ 308 and 381 Subpart H and the proposed addition of new §§ 416.1 through 416.6. These revisions would be nonsubstantive. Second, FSIS plans to rescind or revise many sanitation issuances and directives inconsistent with the proposed rule and with HACCP.

Much of the material contained in the rescinded or revised issuances and directives would be re-formatted and published as guidance materials providing information, advice, and suggestions on how the proposed performance standards can be met. For example, the contents of MPI Bulletin 83–16 (Re-Use of Water or Brine Cooking Solution on Product Following a Heat Treatment) will remain available from the Agency as guidance material for establishments to use in addressing the proposed performance standards.

Some of the material has been used to develop performance standards FSIS is proposing or plans to propose. For instance, material from FSIS Directive 7110.4 (Liquid Smoke Re-Use) was used to develop the proposed performance standard for solution re-use.

*Issuances To Be Rescinded by the Agency*

FSIS would rescind the following directives and issuances prior to the finalization of this proposal:

Approved Water Systems Guide

FSIS Directive 7110.4—Liquid Smoke Re-Use

FSIS Directive 11,100.1—Sanitation Handbook

FSIS Directive 11,000.2—Plant Sanitation

FSIS Directive 11,000.4—Paints and Coatings in Official Establishments

FSIS Directive 11,210.1—Protecting Potable Water Supplies on Official Premises

FSIS Directive 11,220.2—Guidelines for Sanitization of Automatic Poultry Eviscerating Equipment

FSIS Directive 11,240.5—Plastic Cone Deboning Conveyors

FSIS Directive 11,520.2—Exposed Heat-Processed Products; Employee Dress

FSIS Directive 11,520.4—Strip Doors in Official Establishments

FSIS Directive 11,540.1—Use of Certain Vehicles as

Refrigeration or Dry Storage Facilities

MPI Bulletin 77–34—Chemical Disinfection in Lieu of 180° F Water

MPI Bulletin 77–129—Water Conservation and Sanitation

MPI Bulletin 79–68—Use of Iodine in Processing Water

MPI Bulletin 81–38—Equipment and Procedure Requirements for Processing Gizzards ,

MPI Bulletin 83–14—Monitoring Chlorine Concentration in

Official Establishments

MPI Bulletin 83–16—Re-Use of Water or Brine Cooking Solution on Product Following a Heat Treatment

*Executive Order 12866 and Regulatory Flexibility Act*

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, FSIS has performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, FSIS does not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, FSIS is inviting comments concerning potential effects. In particular, FSIS is interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

FSIS is proposing to revise and consolidate the sanitation regulations for meat and poultry establishments, resolve unnecessary differences between similar requirements for meat and poultry, and convert prescriptive requirements to performance standards. This proposal would affect meat and poultry establishments subject to official inspection, custom exempt red meat establishments, and consumers.

In general, the proposed streamlining, clarification, and consolidation of the sanitation regulations should benefit FSIS, the regulated industry, and consumers. User-friendly regulations would simplify compliance and therefore could bring about food safety enhancements in individual establishments. Further, consolidation of the separate sanitation requirements for meat and poultry products and the consequent elimination of unnecessary inconsistencies could enhance competition.

This proposed rule would allow individual establishments to develop and implement customized sanitation procedures other than those currently mandated, as long as those procedures produced sanitary conditions meeting the proposed performance standards. Establishments taking advantage of the performance standards to innovate thus could benefit from savings accrued through increased efficiency. However, since the currently mandated sanitation procedures meet the proposed performance standards, establishments lacking the resources to innovate could choose to continue employing current procedures. Such establishments should incur no additional expenses as a result of this rule. FSIS therefore anticipates

that sanitation performance standards would have a generally favorable economic impact on all establishments, regardless of size.

It is difficult to quantify the potential benefits of the proposed performance standards since it is not possible to predict exactly how many establishments would develop innovative processes and how these innovations reduce. However, FSIS sees the potential for an increase in the efficiency of the nation's economy in general because the proposed performance standards would stimulate innovation and encourage businesses to consider a more efficient use of resources. Also, the possibility of subsequently reduced prices of meat or poultry products are economic factors that could produce a more efficient use of resources in the economy as a whole. These effects would be small for individual firms and consumers, but could be substantial in the aggregate.

Finally, FSIS is restructuring inspection activities to focus more attention on the ability of establishments to maintain a sanitary environment through implementation of the new Sanitation SOP requirements. This proposal is part of that initiative and is intended to reduce demands on FSIS resources which could be redirected to functions more critical to improving food safety. FSIS anticipates that this proposal, along with the HACCP, Sanitation SOP, and other food safety initiatives, would produce significant economic and societal benefits by reducing the incidence of foodborne illness.

As an alternative to the present proposal, the Agency considered proposing more comprehensive and prescriptive sanitation regulations. The proposed requirements would then have included very specific definitions of terms, such as definitions for food contact surfaces or premises; more prescriptive performance standards than those proposed, such as microbial criteria for recently cleaned and sanitized food contact surfaces; detailed requirements currently contained in Agency guidance materials, such as an ambient temperature requirement for rooms in which certain processes are conducted; and a list of specific regulatory prohibitions, again largely drawn from existing regulatory and guidance material.

The Agency did not choose this more detailed and prescriptive alternative, due to the unnecessarily restrictive burden it would place on industry, and has made tentative decisions in these areas, on which it specifically requests comments. On the matter of definitions, the Agency has determined that within the food processing community and the meat and poultry processing industry there is an understanding of descriptive terms such as "food contact surfaces" and "premises," and that to construct a technically accurate definition which encompassed all the possible meat and poultry establishment situations in which the term could be applied was neither useful nor likely to succeed. The Agency notes, however, that these and other terms are defined in both the Food Code and in certain FDA regulations and specifically requests comment on whether those definitions ought to be referenced in FSIS regulations.

Similarly, the Agency has made a tentative decision that a proliferation of prescriptive standards applicable to the establishment environment or its features, like ambient temperature or microbial characteristics of cleaned equipment, would not be a useful addition to the proposed standards, which are based on the general requirement that establishments prevent product contamination or adulteration. At various other places in its regulations, the Agency has established performance standards applicable to meat and poultry products. The newest is the *Salmonella* performance standard for raw carcasses and ground product established in the Pathogen Reduction/ HACCP final regulation. Another is the zero tolerance standard for fecal material on raw carcasses. Others include the prohibition on violative levels of chemical residues and the policy that there be no *Listeria* or *Salmonella* on certain ready-to-eat products. Achieving these product-based performance standards depends on an establishment doing a number of things correctly, including correctly carrying out the sanitation responsibilities set forth in part 416.1 through 416.6. FSIS has tentatively concluded that because there are many methods and means through which establishments can ensure that product is not contaminated or adulterated, FSIS will not prescribe exactly which methods, procedures, or means must be used. FSIS requests comment on this tentative decision.

FSIS is carefully reviewing its guidance material on sanitation in an effort to develop the most comprehensive possible set of approaches which can be considered by establishments as they determine how they will go about meeting the performance standards. If that reviews yields provisions which should become parts of the performance standards, FSIS will revise its regulations accordingly. If the review yields a number of possible approaches which could be used by an establishment, they will all be included in guidance material, which FSIS expects to complete by the time this proposal is made final.

Finally, on the issue of whether there should be a list of specific prohibited practices retained in the regulations, FSIS has made a tentative decision that this is not necessary and could be misleading. Most of the prohibited practices which are mentioned in the current sanitation regulations represent only one or a small fraction of the ways in which establishments could fail to meet a performance standard. For example, using burlap as a wrap directly applied to the surface of meat is only one of the means by which an establishment could be failing to prevent direct product contamination. Preventing direct product contamination is the performance standard. It encompasses a prohibition on using burlap as a wrap, as well as a large number of other practices. The Agency believes that a partial or outdated list of regulatory prohibitions may suggest that anything not on the list is not prohibited. FSIS prefers to communicate about unsuitable practices through its guidance material, while holding establishments directly responsible for meeting concisely defined performance standards which mitigate against a wide range of unsuitable practices.

The other alternative available to FSIS was to maintain the current sanitation requirements. However, as explained in detail above, the current requirements are to an extent inconsistent with the principles of HACCP, can impede innovation, and often can lead to confusion about FSIS and establishment responsibilities for food safety.

*Executive Order 12778*

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which

are not at such an establishment, after their entry into the United States.

This proposed rule is not intended to have retroactive effect.

If this proposed rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR §§ 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

*Executive Order 12898*

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," FSIS has considered potential impacts of this proposed rule on environmental and health conditions in low-income and minority communities.

This proposed rule would consolidate the sanitation regulations for meat and poultry establishments into a single part, eliminate unnecessary differences between the meat and poultry sanitation requirements, and convert many of the highly prescriptive requirements to performance standards. As explained in the economic impact analysis above, the proposed regulations should generally benefit FSIS, the regulated industry, and consumers. The proposed regulations would not require or compel meat or poultry establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this proposed rule would not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

*Paperwork Requirements*

*Abstract:* FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act.

Under the current regulations, if meat and poultry establishments are cited for rodent or vermin infestation, FSIS requires establishments to develop a written corrective action report. The Office of Management and Budget (OMB) under control number 0583–0082, "Meat and Poultry Inspection and Application for Inspection," has approved 351 burden hours for this activity.

This proposed rule would eliminate the requirement that establishments develop rodent and vermin infestation corrective action reports. Corrective action measures for rodent and vermin infestation will be part of establishments' Sanitation SOP's. The burden hours reported for Sanitation SOP's includes the development of these corrective actions. Therefore, FSIS would request OMB to remove the 351 burden hours approved for the development of rodent and vermin infestation corrective action reports.

Also, proposed § 416.2(g)(1) requires that establishments, upon request, make available to FSIS "water reports issued under the authority of the State health agency certifying or attesting to the quality of the water supply." This paperwork collection requirement already is in place under the current regulations and is approved under OMB control number 0583–0082, "Meat and Poultry Inspection and Application for Inspection."

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, South Agriculture Building, Room 3812, Washington, DC 20250.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Comments are requested by October 24, 1997. To be most effective, comments should be sent to OMB within 30 days of the publication date of this proposed rule.

**List of Subjects**

*9 CFR Part 303*

Meat inspection, Reporting and recordkeeping requirements.

*9 CFR Part 308*

Meat inspection.

*9 CFR Part 381*

Poultry and poultry products inspection, Reporting and recordkeeping requirements.

*9 CFR Part 416*

Sanitation.

Accordingly, title 9, chapter III, of the Code of Federal Regulations would be amended as follows:

## PART 303—EXEMPTIONS

1. The authority citation for part 303 would continue to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 303.1 would be amended by revising paragraph (a)(2)(i) to read as follows:

**§ 303.1 Exemptions.**

(a) * * *

(2) * * *

(i) Establishments conducting custom slaughter operations must be maintained and operated in accordance with the provisions of part 416 except for: §§ 416.2(g) (1) through (7), regarding water reuse; the provision in § 416.2(i) requiring that separate toilet facilities be provided where both sexes are employed (if the majority of the workers in the custom slaughter establishment are related by blood or marriage and this arrangement will not conflict with municipal or State requirements); and any provisions of part 416 relating to inspection or supervision of specified activities or other action by a Program employee. If custom operations are conducted in an official establishment, however, all of the provisions of Part 416 shall apply to those operations.

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## PART 308—[REMOVED]

3.–4. Part 308 would be removed.

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for part 381 would continue to read as follows:

**Authority:** 7 U.S.C. 138f; 7 U.S.C. 450, 21 U.S.C. 451–470; 7 U.S.C. 2.18, 2.53.

### Subpart H—[Removed]

6. Subpart H would be removed.

7. Section 381.99 would be revised to read as follows:

**§ 381.99 Official retention and rejection tags.**

The official marks for use in post-mortem inspection and identification of adulterated products, insanitary equipment and facilities are:

(a) A paper tag (a portion of Form MP–35) bearing the legend "U.S. Retained" for use on poultry or poultry products under this section.

(b) A paper tag (another portion of Form C&MS 510) bearing the legend "U.S. Rejected" for use on equipment, utensils, rooms and compartments under this section.

## PART 416—SANITATION

8. The authority citation for part 416 would continue to read as follows:

**Authority:** 21 U.S.C. 451–470, 601–680; 7 U.S.C. 450; 7 CFR 2.18, 2.53.

9. Part 416 would be amended by adding new §§ 416.1 through 416.6, to read as follows:

**§ 416.1 General rules.**

Each official establishment must be operated and maintained in a sanitary manner sufficient to ensure that product is not contaminated, adulterated, or misbranded.

**§ 416.2 Establishment grounds and facilities.**

(a) *Grounds and pest control.* The grounds about an establishment must be maintained to prevent conditions that could lead to contamination or adulteration of product or that could prevent FSIS programs employees from performing assigned tasks. Establishments must have in place an integrated pest management program to prevent the harborage and breeding of pests on the grounds and within establishment facilities. Pest control substances used must be safe and effective under the conditions of use and not result in the contamination or adulteration of product.

(b) *Construction.* (1) Establishment buildings, including their structures, rooms, and compartments must be of sound construction, kept in good repair, and be of sufficient size to allow for the sanitary processing, handling, and storage of product.

(2) Walls, floors, and ceilings within establishments must be built of durable materials impervious to moisture and be cleaned, maintained, and sanitized when necessary to prevent contamination or adulteration of product.

(3) Walls, floors, ceilings, doors, windows, and other outside openings must be constructed and maintained to prevent the entrance of vermin, such as flies, rats, and mice.

(4) Rooms or compartments in which edible product is processed, handled, or stored must be separate and distinct from rooms or compartments in which inedible product is processed, handled, or stored.

(c) *Light.* Lighting of good quality and sufficient intensity to ensure that sanitary conditions are maintained and that product is not contaminated, adulterated or misbranded must be provided in areas where food is processed, handled, stored, or examined, where equipment and utensils are cleaned, and in hand-washing areas, dressing and locker rooms, and toilets.

(d) *Ventilation.* Ventilation adequate to eliminate odors, vapors, and condensation must be provided to prevent contamination or adulteration of product and to ensure that FSIS programs employees can perform assigned tasks.

(e) *Plumbing.* Plumbing systems must be installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the establishment;

(2) Properly convey sewage and liquid disposable waste from the establishment;

(3) Prevent contamination or adulteration of product, water supplies, equipment, or utensils, and maintain sanitary conditions throughout the establishment;

(4) Provide adequate floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor; and

(5) Prevent back-flow conditions in and cross-connection between piping systems that discharge waste water or sewage and piping systems that carry water for product manufacturing;

(6) Prevent the backup of sewer gases.

(f) *Sewage disposal.* Sewage must be disposed into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. When the sewage disposal system is a private system requiring approval by a State or local health authority, the establishment must be able to furnish FSIS with the letter of approval from that authority upon request.

(g) *Water supply and reuse.* (1) A supply of running water that complies with the National Primary Drinking Water regulations (40 CFR Part 141), at a suitable temperature and under pressure as needed, must be provided in all areas where required (for processing product, for cleaning rooms and equipment, utensils, and packaging materials, for employee sanitary facilities, etc.). A water report, issued under the authority of the State health agency, certifying or attesting to the quality of the water supply, must be made available to the Agency upon request.

(2) Water used to chill or cook ready-to-eat product may be reused for the same purpose, provided that measures are taken to ensure that it is maintained free of pathogenic organisms and fecal coliform organisms and that other physical, chemical, and microbiological contamination is reduced so as to prevent contamination or adulteration of product.

(3) Water used to chill or wash raw product may be reused for the same purpose provided that measures are taken to reduce physical, chemical, and microbiological contamination so as to prevent contamination or adulteration of product. Reuse water which has come into contact with raw product may not be used on ready-to-eat product.

(4) Reconditioned water that has never contained human waste and which has been treated by an onsite advanced wastewater treatment facility may be used on raw product, except in product formulation, and throughout the facility in edible and inedible production areas, provided that measures are taken to assure that this water meets the criteria prescribed in paragraph (g)(1) of this section. Product, facilities, equipment, and utensils coming in contact with this water must undergo a separate final rinse with non-reconditioned water that meets the criteria prescribed in paragraph (g)(1) of this section.

(5) Any water that has never contained human waste and is free of pathogenic organisms may be used in edible and inedible product areas, provided it does not contact edible product. For example, such reuse water may be used to move heavy solids, flush the bottom of open evisceration troughs, or to wash antemortem areas, livestock pens, trucks, poultry cages, picker aprons, picking room floors, and similar areas within the establishment.

(6) Water which does not meet the use conditions of paragraphs (g)(1) through (g)(5) of this section, may not be used in areas where edible product is handled or prepared or in any manner which would allow it to contaminate or adulterate edible product.

(h) *Ice and solution reuse.* (1) Ice used or reused must have been originally produced from water meeting the

requirements of paragraphs (g)(1) of this section.

(2) Ice used on raw product may not be reused on ready-to-eat product.

(3) Ice or solutions (such as brine, liquid smoke, or propylene glycol) may be reused on ready-to-eat product if they are free of pathogenic and fecal coliforms and if other physical, chemical, and microbiological contamination has been reduced so as to prevent the contamination or adulteration of product.

(4) Ice or solutions may be reused on raw and partially-cooked product if they are free of fecal coliforms and if other physical, chemical and microbiological contamination has been reduced so as to prevent the adulteration of product.

(i) *Dressing rooms, lavatories, and toilets.* (1) Dressing rooms, toilet rooms, and urinals must be sufficient in number, ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. They must be separate from the rooms and compartments in which products are processed, stored, or handled. Where both sexes are employed, separate facilities must be provided.

(2) Lavatories with running hot and cold water, soap, and towels, must be placed in or near toilet and urinal rooms and at such other places in the establishment as necessary to ensure cleanliness of all persons handling any product.

(3) Refuse receptacles constructed and maintained in a manner that protects against contamination or adulteration of food must be provided.

**§ 416.3 Equipment and utensils.**

(a) Equipment and utensils used for processing or otherwise handling edible product or ingredient must be of such material and construction to facilitate thorough cleaning and ensure that product is not contaminated, adulterated, or misbranded during processing, handling, or storage. Equipment and utensils must be maintained in sanitary condition so as not to contaminate or adulterate product.

(b) Equipment and utensils must not interfere with inspection procedures or prevent FSIS programs employees from performing assigned tasks.

(c) Receptacles used for storing inedible material must be of such material and construction that their use will not result in contamination or adulteration of any edible product or in insanitary conditions at the establishment. They must not be used for storing any edible product and must bear conspicuous and distinctive marking to identify permitted uses.

**§ 416.4 Sanitary operations.**

(a) All food-contact surfaces, including food-contact surfaces of utensils and equipment, must be cleaned daily prior to starting operations and as frequently as necessary so that they are free of physical and chemical contamination and so that microbiological populations are reduced so as to prevent contamination or adulteration of product.

(b) Non-food-contact surfaces of facilities, equipment, and utensils used in the operation of the establishment must be cleaned as frequently as necessary to prevent the physical, chemical, or biological contamination or adulteration of product.

(c) Cleaning compounds and sanitizing agents used must be safe and effective under the conditions of use and their use must not cause the contamination or adulteration of product.

(d) Product must be protected from contamination or adulteration during processing, handling, storage, loading, and unloading at and during transportation from official establishments; ready-to-eat product must be protected from cross-contamination by pathogenic organisms.

**§ 416.5 Employee hygiene.**

(a) *Cleanliness.* All persons working in contact with product, food-contact surfaces, and product-packaging materials must adhere to hygienic practices while on duty to prevent contamination or adulteration of product.

(b) *Clothing.* Aprons, frocks, and other outer clothing worn by persons who handle product must be of material that is readily cleaned. Clean garments must be worn at the start of each working day and garments must be changed during the day as often as necessary to prevent contamination or adulteration of product.

(c) *Disease control.* Any person who has or appears to have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination must be excluded from any operations which could result in product contamination or adulteration until the condition is corrected.

**§ 416.6 Tagging insanitary equipment, utensils, rooms or compartments.**

When a Program employee finds that any equipment, utensil, room, or compartment at an official establishment is unclean or that its use would be in violation of any of the regulations in this subchapter, he will attach to it a "U.S. Rejected" tag. Equipment, utensils, rooms, or compartments so tagged cannot be used until made acceptable. Only a Program employee may remove a "U.S. Rejected" tag.

Done in Washington, DC on: August 11, 1997.

**Thomas J. Billy,**

*Administrator.*

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federal register

Monday
August 25, 1997

Part III

# Office of Personnel Management

5 CFR Parts 178 and 551

Settling Claims Procedures and Fair Labor Standards Act Pay Administration; Proposed Rules

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 178**

**RIN 3206–H89**

**Procedures for Settling Claims**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is proposing rules of procedure for the settlement of claims submitted to OPM for Federal civilian employees' compensation and leave, for proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries, and for the settlement of deceased employees' compensation. Before June 30, 1996, these claims were settled by the United States General Accounting Office (GAO). However, on that date, pursuant to the Legislative Branch Appropriations Act of 1996, the authority to settle these claims transferred to the Director, Office of Management and Budget, who delegated this function to the Office of Personnel Management.

**DATES:** Comments must be submitted on or before October 24, 1997.

**ADDRESSES:** Comments may be mailed to the Claims Adjudication Unit, Office of the General Counsel, Room 7537, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Paul Britner, Senior Attorney, 202–606–2233.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to the Legislative Branch Appropriations Act of 1996, most of the claims settlement functions performed by the General Accounting Office (GAO) were transferred to the Director, Office of Management and Budget. *See* Sec. 211, Pub. L. 104–53, 109 Stat. 535. Subsequently, the Acting Director delegated these functions to various components within the Executive branch in a determination order dated June 28, 1996. In summary, this order delegated to the Office of Personnel Management the authority to settle claims against the United States involving Federal employees' compensation and leave, deceased employees' compensation, and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. Subsequently, Congress codified these changes through additional legislation. *See* Pub. L. 104–316, 110 Stat. 3826. The procedures in this proposed rule are substantially similar to the procedures formerly used by the GAO, which are found at 4 CFR parts 31, 32 and 33. Changes to these regulations are discussed below.

## II. Analysis of the Regulations

*Subpart A—Administrative Claims—Compensation and Leave, Deceased employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries*

*Section 178.101, Scope of Subpart*

This section describes the types of claims that may be submitted for settlement to OPM, which are claims for federal civilian compensation and leave and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. Claims subject to a negotiated grievance procedure are excluded from this part.

*Section 178.102, Procedures for Submitting Claims*

This section requires claimants to submit their claims directly to OPM, except that at an agency's discretion, the agency may forward the claim on behalf of a claimant. The information that must be included in a claim and an agency report, when requested by OPM, is described. This section also advises claimants where their claims should be sent, depending on the nature of the claim. As a general rule, claims arising from the Fair Labor Standards Act (FLSA) are to be sent to the designated OPM Oversight Division that has jurisdiction for the location of the claim. All other claims are to be sent to OPM in Washington, DC. to the address set forth in the regulations.

*Sections 178.103–178.106*

These sections do not make any substantive changes to the comparable GAO procedures.

*Section 178.107, Finality of Claims Settlements*

Under GAO's regulations, a dissatisfied claimant could appeal an adverse settlement to the Comptroller General and, if sustained, the claimant could request reconsideration of that decision. Unlike the settlement process at GAO, there will be no further review within OPM. At GAO, the initial claims settlement letter was prepared by an adjudicator and was reviewed by an attorney only if the claimant requested an appeal. At OPM, all settlement letters, except those involving FLSA claims, are reviewed by an attorney before they are issued. Therefore, non-FLSA claims settled by OPM will get substantially the same level of review as claims settled by GAO. Claimants also are advised of their right to bring an action in an appropriate United States court.

*Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees*

*Section 178.201, Scope of Subpart*

This subpart applies to claims for money due to the accounts of deceased civilian officers and employees of the Federal Government and of the government of the District of Columbia, including wholly owned and mixed-ownership Government corporations.

*Section 178.202, Definitions*

Definitions used in subpart B are provided in this section.

*Section 178.203, Designation of Beneficiary*

This section combines §§ 33.4 and 33.5 of 4 CFR into one that describes an employee's right to designate a beneficiary for money due, an agency's responsibility for employee notification, and the specific form and procedures for doing so. The procedures have been shortened and streamlined but contain no substantive changes from the GAO procedures.

*Section 178.204, Order of Payment Precedence*

This section was taken from paragraph (d) of 4 CFR 33.6 and made into a separate section outlining the order of payment precedence.

*Section 178.205, Procedures Upon Death of Employee*

This section outlines procedures that should be followed upon the death of an employee by the employee's designated beneficiaries or survivors for the settlement of accounts of any money due to the decedent. This section combines 4 CFR 33.7 and 33.8 of the GAO procedures and reorganizes the information provided. The substance of the section remains the same as in the GAO sections.

*Section 178.206, Return of Unnegotiated Government Checks*

This section contains no substantive change to the GAO procedures.

*Section 178.207, Claims Settlement Jurisdiction*

This section has been streamlined to include only information about claims settlements. The information regarding order of payment precedence has been placed in a separate section. This section refers claimants to the procedures in subpart A and the

jurisdiction of the Claims Adjudication Unit, Office of General Counsel, Office of Personnel Management, for settlement of any claims arising under this subpart.

*Section 178.208, Applicability of General Procedures*

This section refers readers to subpart A of this part for application of general claims procedures. This function was previously covered under 4 CFR part 31.

**Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Paperwork Reduction Act of 1995**

Section 178.102, 178.103 and 178.205(b) contain information collection requirements related to procedures for submitting claims. These regulations assist OPM in settling claims by requiring that information be gathered in an organized and efficient manner. Section 178.102 sets out the required contents of any claim submitted; § 178.103 is an additional requirement of proof if the claim is filed by a representative of the claimant; and § 178.205(b) lists the information necessary, should the claim involve a minor or incompetent.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), OPM has submitted a copy of these sections to the Office of Management and Budget (OMB) for review. Collection of Information: Procedures for Submitting Claims for Compensation and Leave, Deceased Employees' Accounts, and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries.

The total estimated annual reporting burden resulting from these collection of information requirements is 130.5 hours.

| | | |
|---|---|---|
| (130 respondents × 1 hour {average time to prepare claim}) | = | 130.00 + |
| (1 representative × .25 {time for additional requirements}) | = | .25 + |
| (1 minor or incompetent × .25 {additional requirements}) | = | .25 |
| annual reporting burden | | 130.50 |

Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for OPM.

OMB considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected: and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to OPM on the proposed regulations.

**List of Subjects in 5 CFR Part 178**

Administrative practice and procedure, Claims, Compensation, Government employees.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR by adding part 178 as follows:

## PART 178—PROCEDURES FOR SETTLING CLAIMS

**Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries**



**Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees**



**Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries**

**Authority:** 31 U.S.C. 3702; 5 U.S.C. 5583; 38 U.S.C. 5122; Pub. L. 104–53, sec. 211, Nov. 19, 1995; E.O. 12107.

**§ 178.101 Scope of subpart.**

(a) *Claims covered.* This subpart prescribes general procedures applicable to claims against the United States that may be settled by the Director of the Office of Personnel Management pursuant to 31 U.S.C. 3702, 5 U.S.C. 5583 and 38 U.S.C. 5122. In general, these claims involve Federal employees' compensation and leave and claims for proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries.

(b) *Claims not covered.* This subpart does not apply to claims that are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority or claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7121(a). Also, these procedures do not apply to claims under the Fair Labor Standards Act (FLSA). Procedures for FLSA claims are set out in part 551 of this chapter.

**§ 178.102 Procedures for submitting claims.**

(a) *Content of claims.* Except as provided in paragraph (b) of this section, a claim shall be submitted by the claimant in writing and must be signed by the claimant or by the claimant's representative. While no specific form is required, the request should describe the basis for the claim and state the amount sought. The claim should also include:

(1) The name, address, telephone number and facsimile machine number, if available, of the claimant;

(2) The name, address, telephone number and facsimile machine number, if available, of the agency employee who denied the claim;

(3) A copy of the denial of the claim; and,

(4) Any other information which the claimant believes OPM should consider.

(b) *Agency submissions of claims.* At the discretion of the agency, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (a) of this section.

(c) *Administrative report.* At OPM's discretion, OPM may request the agency to provide an administrative report. This report should include:

(1) The agency's factual findings;

(2) The agency's conclusions of law with relevant citations;

(3) The agency's recommendation for disposition of the claim;

(4) A complete copy of any regulation, instruction, memorandum, or policy relied upon by the agency in making its determination;

(5) A statement that the claimant is or is not a member of a collective bargaining unit, and if so, a statement that the claim is or is not covered by a negotiated grievance procedure that specifically excludes the claim from coverage; and

(6) Any other information that the agency believes OPM should consider.

(d) *Canceled checks for veterans' benefits.*. Claims for the proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries must be accompanied by evidence that the claimant is the duly appointed representative of the decedent's estate and that the estate will not escheat.

(e) *Where to submit claims.* (1) All claims under this section should be sent to the Claims Adjudication Unit, Room 7535, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Telephone inquiries regarding these claims may be made to (202) 606–2233.

(2) FLSA claims should be sent to the appropriate OPM Oversight Division as provided in part 551 of this chapter.

**§ 178.103 Claim filed by a claimant's representative.**

A claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the representative's right to act for the claimant.

**§ 178.104 Statutory limitations on claims.**

(a) *Statutory limitations relating to claims generally.* Except as provided in paragraphs (b) and (c) of this section or as otherwise provided by law, all claims against the United States Government are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the Office of Personnel Management, or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued. The claimant is responsible for proving that the claim was filed within the applicable statute of limitations.

(b) *Claims under the Fair Labor Standards Act (FLSA).* Claims arising under the FLSA, 29 U.S.C. 207, *et seq.*, must be received by the Office of Personnel Management, or by the department or agency out of whose activity the claim arose, within the time limitations specified in the FLSA.

(c) *Other statutory limitations.* Statutes of limitation other than that identified in paragraph (a) of this section may apply to certain claims. Claimants are responsible for informing themselves regarding other possible statutory limitations.

**§ 178.105 Basis of claim settlements.**

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

**§ 178.106 Form of claim settlements.**

OPM will send a settlement to the claimant advising whether the claim may be allowed in whole or in part. If OPM requested an agency report or if the agency forwarded the claim on behalf of the claimant, OPM also will send the agency a copy of the settlement.

**§ 178.107 Finality of claim settlements.**

(a) The OPM settlement is final; no further administrative review is available within OPM.

(b) Nothing is this subpart limits the right of a claimant to bring an action in an appropriate United States court.

**Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees**

**Authority:** 5 U.S.C. 5581, 5582, 5583

**§ 178.201 Scope of subpart.**

(a) *Accounts covered.* This subpart prescribes forms and procedures for the prompt settlement of accounts of deceased civilian officers and employees of the Federal Government and of the government of the District of Columbia (including wholly owned and mixed-ownership Government corporations), as stated in 5 U.S.C. 5581, 5582, 5583.

(b) *Accounts not covered.* This subpart does not apply to accounts of deceased officers and employees of the Federal land banks, Federal intermediate credit banks, or regional banks for cooperatives (see 5 U.S.C. 5581(1)). Also, these procedures do not apply to payment of unpaid balance of salary or other sums due deceased Senators or Members of the House of Representatives or their officers or employees (see 2 U.S.C. 36a, 38a).

**§ 178.202 Definitions.**

(a) The term *deceased employees* as used in this part includes former civilian officers and employees who die subsequent to separation from the employing agency.

(b) The term *money due* means the pay, salary, or allowances due on account of the services of the decedent for the Federal Government or the government of the District of Columbia. It includes, but is not limited to:

(1) All per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses which are incurred in connection with the travel and for which reimbursement is due;

(2) All allowances upon change of official station;

(3) All quarters and cost-of-living allowances and overtime or premium pay;

(4) Amounts due for payment of cash awards for employees' suggestions;

(5) Amounts due as refund of salary deductions for United States Savings bonds;

(6) Payment for all accumulated and current accrued annual or vacation leave equal to the pay the decedent would have received had he or she lived

and remained in the service until the expiration of the period of such annual or vacation leave;

(7) The amounts of all checks drawn in payment of such compensation which were not delivered by the Government to the officer or employee during his or her lifetime or of any unnegotiated checks returned to the Government because of the death of the officer or employee; and

(8) Retroactive pay under 5 U.S.C. 5344(b)(2).

**§ 178.203 Designation of beneficiary.**

(a) *Agency notification.* The employing agency shall notify each employee of his or her right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated. An employee may change or revoke a designation at any time under regulations promulgated by the Director of the Office of Personnel Management or his or her designee.

(b) *Designation Form.* Standard Form 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, is prescribed for use by employees in designating a beneficiary and in changing or revoking a previous designation; each agency will furnish the employee a Standard Form 1152 upon request. In the absence of the prescribed form, however, any designation, change, or cancellation of beneficiary witnessed and filed in accordance with the general requirements of this part will be acceptable.

(c) *Who may be designated.* An employee may designate any person or person as beneficiary. The term *persons or persons* as used in this part includes a legal entity or the estate of the deceased employee.

(d) *Executing and filing a designation of beneficiary form.* The Standard Form 1152 must be executed in duplicate by the employee and filed with the employing agency where the proper officer will sign it and insert the date of receipt in the space provided on each part, file the original, and return the duplicate to the employee. When a designation of beneficiary is changed or revoked, the employing agency should return the earlier designation to the employee, keeping a copy of only the current designation on file.

(e) *Effective period of a designation.* A properly executed and filed designation of beneficiary will be effective as long as employment by the same agency continues. If an employee resigns and is reemployed, or is transferred to another agency, the employee must execute another designation of beneficiary form in accordance with paragraph (d) of this section. A new designation of beneficiary is not required, however, when an employee's agency or site, function, records, equipment, and personnel are absorbed by another agency.

**§ 178.204 Order of payment precedence.**

To facilitate the settlement of the accounts of the deceased employees, money due an employee at the time of the employee's death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

(a) First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency prior to the employee's death;

(b) Second, if there is no designated beneficiary, to the surviving spouse of the employee;

(c) Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation;

(d) Fourth, if none of the above, to the parents of the deceased employee or the survivor of them;

(e) Fifth, if none of the above, to the duly appointed legal representative of the estate of the deceased employee; and

(f) Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his or her death.

**§ 178.205 Procedures upon death of employee.**

(a) *Claim form.* As soon as practicable after the death of an employee, the agency in which the employee was last employed will request, in the order of precedence outlined in § 178.204, the appropriate person or persons to execute Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee.

(b) *Claims involving minors or incompetents.* If a guardian or committee has been appointed for a minor or incompetent appearing entitled to unpaid compensation, the claim should be supported by a certificate of the court showing the appointment and qualification of the claimant in such capacity. If no guardian or committee has been or will be appointed, the initial claim should be supported by a statement showing:

(1) Claimant's relationship to the minor or incompetent, if any;

(2) The name and address of the person having care and custody of the minor or incompetent;

(3) That any moneys received will be applied to the use and benefit of the minor or incompetent; and

(4) That the appointment of a guardian or committee is not contemplated.

**§ 178.206 Return of unnegotiated Government checks.**

All unnegotiated United States Government checks drawn to the order of a decedent representing money due as defined in § 178.202, and in the possession of the claimant, should be returned to the employing agency concerned. Claimants should be instructed to return any other United States Government checks drawn to the order of a decedent, such as veterans benefits, social security benefits, or Federal tax refunds, to the agency from which the checks were received, with a request for further instructions from that agency.

**§ 178.207 Claims settlement jurisdiction.**

(a) *District of Columbia and Government corporations.* Claims for unpaid compensation due deceased employees of the government of the District of Columbia shall be paid by the District of Columbia, and those of Government corporations or mixed ownership Government corporations may be paid by the corporations.

(b) *Office of Personnel Management.* Each agency shall pay undisputed claims for the compensation due a deceased employee. Except as provided in paragraph (a) of this section, disputed claims for money due deceased employees of the Federal Government will be submitted to the Claims Adjudication Unit, Office of General Counsel, in accordance with § 178.102. For example:

(1) When doubt exists as to the amount or validity of the claim;

(2) When doubt exists as to the person(s) properly entitled to payment; or

(3) When the claim involves uncurrent checks. *Uncurrent checks* are unnegotiated and/or undelivered checks for money due the decedent which have not been paid by the end of the fiscal year after the fiscal year in which the checks were issued. The checks, if available, should accompany the claims.

(c) *Payment of claim.* Claims for money due will be paid by the appropriate agency only after settlement by the Claims Adjudication Unit occurs.

**§ 178.208 Applicability of general procedures.**

When not in conflict with this subpart, the provisions of subpart A of this part relating to procedures applicable to claims generally are also applicable to the settlement of account of deceased civilian officers and employees.

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## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 551**

**RIN 3206–AG70**

## Pay Administration Under the Fair Labor Standards Act

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is publishing a proposed rule to amend regulations on the Fair Labor Standards Act (referred to as "the Act" or "FLSA"). The purpose of the majority of the revisions is to make text clearer, standardize terms, change to the active voice, reorganize material for added clarity, insert or revise headings to accurately reflect content, reduce internal cross-referencing, correct typographical, punctuation, and grammatical errors, and use "plain English." The proposed rule includes guidance published in the sunsetted Federal Personnel Manual (FPM), adds certain work in the computer software field to the professional exemption criteria, adds an exemption for certain pilots, adds the statutory exclusion of customs officers, and includes regulations on child labor and claims and compliance.

**DATES:** Written comments will be considered if received on or before October 24, 1997. Please organize and identify comments by section and paragraph designation.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Jeffrey D. Miller, Director, Classification Appeals and FLSA Programs, Office of Personnel Management, 1900 E Street NW., Room 7679, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey D. Miller, Director, Classification Appeals and FLSA Programs, by telephone on 202–606–2990; by fax on 202–606–2663; or by e-mail at ADOMSOE@opm.gov.

**SUPPLEMENTARY INFORMATION:** On January 10, 1995, OPM published a proposed rule (60 FR 2549) to amend regulations on the Fair Labor Standards Act by adding a subpart F—Complaints and Compliance. That subpart F provided for FLSA complaint adjudication by the agency involved rather than by OPM. Comments were received from four Federal agencies, four labor organizations, and one employee organization. OPM reconsidered its proposal and withdrew the proposed subpart F (62 FR 9995, March 5, 1997).

The purpose of the majority of these revisions is to make text clearer, standardize terms, change to the active voice, reorganize material for added clarity, insert or revise headings to accurately reflect content, reduce internal cross-referencing, correct typographical, punctuation, and grammatical errors, and use "plain English." The proposed rule includes guidance published in the sunsetted Federal Personnel Manual, adds certain work in the computer software field to the professional exemption criteria, adds an exemption for certain pilots, adds the statutory exclusion of customs officers, and adds two new subparts, subpart F—Child Labor and subpart G—FLSA Claims and Compliance. The changes are discussed section by section below. When the reason for a revision is one or more of the ones described in this paragraph, we do not repeat the reason when we describe the change.

**1. Nomenclature Changes**

References to the Office of Personnel Management are changed to "OPM"; the word "shall" is changed to "will" or "must," as appropriate; the phrase "shall be" is changed to "is"; the phrase "employee in a position properly classified" is substituted for "employee classified"; and "primary duty test" is substituted for "primary duty criterion."

**2. Miscellaneous Changes**

The following changes are made throughout: quotation marks are removed, and paragraph headings are added.

**3. New Sections**

Two new sections are added to subpart B—Exemptions and the subpart is retitled "Exemptions and Exclusions." One new section (551.204) describes the exemption of Federal Wage System employees. The other new section (551.211) describes the statutory exclusion of customs officers of the United States Customs Service. Customs officers whose exclusive entitlement to overtime pay is governed by section 5 of the Act of Feb. 13, 1911, as amended (sections 261 and 267 of title 19, United States Code), are excluded from the hours of work and overtime pay provisions of the FLSA. As used in section 5, the term "customs officer" means a customs inspector, a supervisory customs inspector, a canine enforcement officer, or a supervisory canine enforcement officer.

**4. New Subparts**

Two new subparts are added. The first (subpart F) addresses child labor and the second (subpart G) addresses complaints and compliance.

**5. Subpart A**

Subpart A is restructured. Section 551.102—Definitions is redesignated § 551.104 with the same title. Section 551.104—Administrative authority is redesignated § 551.102 and retitled "Authority and administration".

**6. Section 551.101—General.**

The second sentence of paragraph (a) is revised by deleting all that follows the word "Act". Revised paragraph (a) is moved to redesignated § 551.102—Authority and administration.

Paragraph (b) is redesignated paragraph (a). In the first sentence, the phrase "Fair Labor Standards Act of 1938, as amended (referred to as "the Act" or "FLSA")" replaces the word "Act".

Paragraph (c) is redesignated paragraph (b).

**7. Redesignated § 551.102—Authority and Administration**

Paragraph (a) is moved to this section from published § 551.101 and paragraphs (b), (c), and (d) are added.

Paragraph (a), moved here from published § 551.101, describes OPM's authority. The sole sentence of published § 551.104—Administrative authority is added to paragraph (a) and is revised by deleting all the text following the word "except" and substituting "as specified in paragraphs (b), (c), and (d) of this section."

Paragraph (b) states that the Equal Employment Opportunity Commission administers the equal pay provisions of the Act.

Paragraph (c) lists the United States Government entities for which the Department of Labor administers the Act. Those are the Library of Congress, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority.

Paragraph (d) lists the United States Government entities for which the Office of Compliance administers the Act. The Congressional Accountability

Act of 1995 (Pub. L. 104–1, 109 Stat. 4, January 23, 1995) authorized the application of the provisions of the FLSA to the legislative branch of the Federal Government and authorized the Office of Compliance to administer the FLSA for any employee of the United States House of Representatives; the Unites States Senate; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; and the Office of Technology Assessment.

**8. Section 551.103—Coverage**

The phrase "as defined in § 551.102" is deleted from paragraphs (b)(2) and (b)(3).

**9. Redesignated § 551.104—Definitions**

Several of the current definitions are revised. The phrase "or FLSA" is added to the definition of "Act". The definition of "agency" is revised by deleting the colon and all text following the colon and adding "the entities of the United States Government listed in § 551.101 for which the Department of Labor and the Office of Compliance administer the Act." The definition of "employ" is revised by deleting the phrase "as defined for this part". The definition of "employee" is revised by adding a reference to law to subparagraphs (1) and (2) and deleting the words "legislative or" from subparagraph (4). The list of locations under the definition of "exempt area" is updated—"U.S." is inserted before the name "Virgin Islands," Eniwetol Atoll and Kwajalein Atoll are deleted, and Midway Atoll and Palmyra are added.

Many of the terms used in the FLSA arena have acquired well-established interpretations that sometimes differ from the customary interpretations in the Federal service. Terms and definitions from FPM Letter No. 551–7, dated July 1, 1975, are added, as well as definitions of other FLSA and pay administration terms. Terms added are as follows:

Administrative employee
Claim
Claim period
Claimant
Customarily and regularly
De minimis activity or worktime
Discretion and independent judgment
Emergency
Essential part of administrative or professional functions
Executive employee
FLSA exempt
FLSA exemption status
FLSA exemption status determination claim
FLSA nonexempt
FLSA overtime pay
FLSA pay claim
Foreign exemption
Formulation or execution of management programs or policies
Hours of work
Management or general business function or supporting service
Nonexempt area
Participation in the executive or administrative functions of a management official
Perform work in connection with an emergency
Preserve the claim period
Primary duty
Professional employee
Reckless disregard of the requirements of the Act
Recognized organizational unit
Situations 1 through 4
Statute of limitations
Supervisory and closely related work
Temporary work or duties
Title 5 overtime pay
Willful violation
Work of an intellectual nature
Work of a specialized or technical nature
Workday
Worktime
Worktime in a representative workweek
Workweek
Workweek basis

**10. Section 551.201—Agency Authority**

The statement "All employees are presumed to be FLSA nonexempt unless the employing agency makes a determination that the position meets one or more of the exemption criteria of this subpart." is added as the first sentence.

**11. Section 551.202—General Principles Governing Exemptions**

The introductory language is revised by deleting the phrase "the principles that—" and substituting "following principles:".

In paragraph (c), the phrase "must be exempted" is changed to "must be designated FLSA exempt" and the sentence "If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt." is added.

Four additional general principles from FPM Letter 551–7, dated July 1, 1975, are added as paragraphs (d) through (g). An additional general principle is added as paragraph (h).

**12. Section 551.203—Exemption of General Schedule Employees**

At the end of paragraph (a) the caveat is added that employees in positions properly classified at GS–4 or below are nonexempt unless subject to the foreign exemption.

In paragraph (b), the phrase "GS–5 or above" is substituted for the phrase "GS–5 through GS–10" and the reference "§§ 551.204, 551.205, and 551.206" is deleted. At the end of paragraph (b) the caveat is added that the exemption status of employees in positions properly classified at GS–5 or above may be affected if the employee is required to temporarily perform work or duties that are not consistent with the employee's official position description or if the employee is subject to the foreign exemption.

**13. Section 551.204—Executive Exemption Criteria**

The section is redesignated from § 551.204 to § 551.205.

In the introductory paragraph, the term "executive employee" is italicized and the quotation marks removed. The title "foreman" is deleted. The phrase "regularly and customarily" is changed to "customarily and regularly" to be consistent with the use of the phrase elsewhere. The phrases "at least three" and "(excluding support personnel)" are removed. The word "both" is substituted for "all." There is no need to distinguish between General Schedule (or equivalent) supervisors and Federal Wage System (or equivalent) supervisors. The *General Schedule Supervisory Guide* published in April 1993 specifies no minimum number of employees to be supervised for a position to be classified as supervisory.

In paragraph (a), the entire text is deleted and the phrase "The primary duty test is met if the employee—" is substituted.

In paragraph (a)(1), the phrase "select or remove, and advance in pay and promote, or make any other status changes of" is changed to "make personnel changes that include, but are not limited to, selecting, removing, advancing in pay, or promoting."

In paragraph (b), the phrase "supervisors in positions properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors*" is substituted for "foreman level supervisors in the Federal Wage System" to update the nomenclature. The word "level" is inserted after the word "equivalent," and the word "comparable" is inserted before the phrase "wage systems." The phrase "employees at the GS–7 through GS–9 level" is deleted and "firefighting or law enforcement employees in positions properly classified in the General Schedule at GS–7, GS–8, or GS–9 that are" is substituted to describe the types of employees subject to 207(k) of title 29, United States Code. The phrase "employees classified at" is deleted and "employees in positions properly

classified in the General Schedule at" is substituted. The words "the" and "level" are deleted from the phrase "classified at the GS–5 or GS–6 level" and inserted in the parenthetical clause to read "(or the equivalent level in other white-collar pay systems)." The phrase "to meet the 80-percent test" is added after "closely related work." Paragraph (b) is restructured to more clearly and easily identify the types of employees to which the paragraph applies.

**14. Section 551.205—Administrative Exemption Criteria**

The section is redesignated from § 551.205 to § 551.206.

In the introductory paragraph, the term "administrative employee" is italicized. The words "advisor, assistance," are deleted and the phrase "advisor or assistant to management" is substituted. The phrase "who meets all" is changed to "and meets all four".

In paragraph (a), the introductory text "The employee's primary duty consists of work that—" is changed to "The primary duty test is met if the employee's work—".

In paragraph (a)(1), the phrase "management policies or programs" is changed to "management programs or policies.

In paragraph (a)(3), the spelling of the word "management" is corrected.

In paragraph (c), the phrase "must frequently exercise" is changed to the phrase "frequently exercises" to be consistent with wording elsewhere.

In paragraph (d), the word "level" is inserted after the word "equivalent," the word "pay" is inserted after the word "collar," and the phrase "to meet the 80-percent test" is added to the end of the sentence.

**15. Section 551.206—Professional Exemption Criteria**

The section is redesignated from § 551.206 to § 551.207.

In the introductory paragraph, the term "professional employee" is italicized.

In paragraph (a), the introductory text "The employee's primary duty consists of—" is replaced with "The primary duty test is met if the employee's work consists of—".

At the end of paragraph (a)(2), the period is replaced with a semicolon followed by the word "or."

Paragraph (a)(3) is added and adds certain work in the computer software field to the types of work meeting the primary duty test. This change brings OPM's regulations into conformance with those of the Department of Labor which implemented the provisions of Pub. L. 101–583, enacted November 15, 1990. That law required the issuance of regulations to permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers to qualify for exemption from the minimum wage and overtime compensation requirements of the Act under section 13(a)(1), the executive, administrative, and professional exemption.

In paragraph (d), the spelling of the word "employees" is corrected, the word "level" is inserted after the word "equivalent," the phrase "white-collar pay" is inserted after the word "other," and the word "in" is changed to "on" after the word "workweek" to make this paragraph consistent with published § 551.204(b) and 551.205(d).

**16. Section 551.207—Foreign Exemption**

The section is redesignated from § 551.207 to § 551.209 and retitled "Foreign exemption criteria." The section is reorganized for clarity and rewritten in plain English.

**17. Section 551.208—Application of the Executive, Administrative, and Professional Exemption Criteria for Periods of Temporary Duty**

The section title is changed from "Application of the executive, administrative, and professional exemption criteria for periods of temporary duty" to "Effect of temporary work or duties on FLSA exemption status." The section is reorganized for clarity and rewritten in plain English. The changes include the following.

The phrase "temporary work or duties" is substituted for the phrase "temporary duty" to make clear that the subject is the work an employee is performing on a temporary basis. The change emphasizes that an employee's FLSA exemption status may change when an employee is temporarily required to perform work or duties not consistent with the employee's official position description and eliminates confusion with the term "TDY" (temporary duty). TDY is commonly used to refer to an employee in travel status or located somewhere on a temporary basis. To further emphasize this point, a sentence is added that states "The period of temporary work or duties may or may not involve a different geographic duty location."

To focus attention on the tasks an employee is being asked to perform temporarily, rather than the type of appointment (permanent appointment, temporary appointment, or term appointment) or the temporariness or permanence of a personnel action (detail or temporary promotion), the phrases "consistent with the employee's official position description" or "not consistent with the employee's official position description" are used in lieu of "duties which are not included in the employee's representative workweek" and "permanent position."

Nomenclature is updated and phrasing is revised to parallel earlier sections. For example, the phrase "in the Federal Wage System at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors*" is substituted for "General Foreman"; the phrase "in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors*" is substituted for "below General Foreman"; and the phrase "80 percent or more of the worktime in a given workweek" is substituted for "more than 80 percent of a given workweek".

**18. Section 551.209—Exemption of Criminal Investigators Receiving Availability Pay**

The section is redesignated from § 551.209 to § 551.110 and retitled "Exemption of employees receiving availability pay."

Paragraph (a) addresses the exemption of criminal investigators receiving availability pay.

Paragraph (b) addresses the exemption of pilots employed by the United States Customs Service who are law enforcement officers and also receive availability pay. Pub. L. 104–19, July 27, 1995, amended section 5545a of title 5, United States Code (U.S.C.), and provided that the provisions of subsections (a)–(h) providing for availability pay apply to a pilot employed by the United States Customs Service who is a law enforcement officer as defined under 5 U.S.C. 5541(3). For the purposes of 5 U.S.C. 5545a, 5 U.S.C. 5542(d) and section 13(a)(16) and (b)(30) of the FLSA (29 U.S.C. 213(a)(16) and (b)(30)), such pilots are deemed to be criminal investigators as defined in 5 U.S.C. 5545a.

**19. Subpart F—Child Labor**

This new subpart sets forth the minimum age standards and delineates the respective responsibilities of an agency and OPM regarding the child labor provisions of the Act.

**20. Subpart G—FLSA Claims and Compliance**

This new subpart describes the applicability of OPM's FLSA claims regulations, time limits that must be observed, avenues of review, the claimant's right to designate a representative, the form and content of

an FLSA claim, responsibilities of claimants and agencies, the circumstances under which an FLSA claim may be withdrawn or denied, the finality and effect of an OPM FLSA claim decision, the availability of information from an FLSA claim file, and where to file an FLSA claim with OPM.

**Regulatory Flexibility Act**

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

**List of Subjects in 5 CFR Part 551**

Government employees, Wages.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR part 551 as follows:

## PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority citation for part 551 continues to read as follows:

**Authority:** 5 U.S.C. 5542(c); sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

2. Subpart A is revised to read as follows:

**Subpart A—General Provisions**

Sec.
551.101 General.
551.102 Authority and administration.
551.103 Coverage.
551.104 Definitions.

### Subpart A—General Provisions

**§ 551.101 General.**

(a) The Fair Labor Standards Act of 1938, as amended (referred to as "the Act" or "FLSA"), provides for minimum standards for both wages and overtime entitlement, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(b) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

**§ 551.102 Authority and administration.**

(a) *Office of Personnel Management.* Section 3(e)(2) of the Act authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act. OPM is the administrator of the provisions of the Act with respect to any person employed by an agency, except as specified in paragraphs (b), (c), and (d) of this section.

(b) *The Equal Employment Opportunity Commission* administers the equal pay provisions contained in section 6(d) of the Act.

(c) The *Department of Labor* administers the Act for the following United States Government entities:

(1) The Library of Congress;
(2) The United States Postal Service;
(3) The Postal Rate Commission; and
(4) The Tennessee Valley Authority.

(d) The *Office of Compliance* administers the Act for the following United States Government entities:

(1) The United States House of Representatives;
(2) The United States Senate;
(3) The Capitol Guide Service;
(4) The Capitol Police;
(5) The Congressional Budget Office;
(6) The Office of the Architect of the Capitol;
(7) The Office of the Attending Physician;
(8) The Office of Compliance; and
(9) The Office of Technology Assessment.

**§ 551.103 Coverage.**

(a) *Covered.* Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is—

(1) Defined as an employee in section 2105 of title 5, United States Code;
(2) Appointed under other appropriate authority; or
(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) *Not covered.* The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;
(2) A trainee; or
(3) A volunteer.

**§ 551.104 Definitions.**

In this part—

*Act* or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*).

*Administrative employee* means an employee who meets the criteria in § 551.206 of this part.

*Agency,* for purposes of OPM's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in § 551.102 for which the Department of Labor or the Office of Compliance administer the Act.

*Claim* means a written allegation from a current or former employee concerning his or her FLSA exemption status determination or entitlement to minimum wage or overtime pay for work performed under the Act.

*Claim period* means the time during which the cause or basis of the claim occurred.

*Claimant* means a current or former employee who files an FLSA claim.

*Customarily and regularly* means a frequency which must be greater than occasional but which may be less than constant. For example, the requirement in § 551.205(a)(2) of this part will be met by an employee who normally and recurrently exercises discretion and independent judgment in the day-to-day performance of duties.

*De minimis activity or worktime* means an activity or worktime of less than 10 minutes a day.

*Discretion and independent judgment* means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The "decisions" made as a result of the exercise of independent judgment may consist of *recommendations for action* rather than the actual taking of action. The fact that an employee's decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

(1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill

in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee's action.

(2) The employee must have the authority to make such determinations during the course of assignments. This precludes exempting trainees who are in a line of work which requires discretion but who have not been given authority to decide discretionary matters independently.

(3) The decisions made independently must be significant. The term "significant" is not so restrictive as to include only the kinds of decisions made by employees who formulate policies or exercise broad commitment authority. However, the term does not extend to the kinds of decisions that affect only the procedural details of the employee's own work, or to such matters as deciding whether a situation does or does not conform to clearly applicable criteria.

*Emergency* means a temporary condition that poses a direct threat to human life or safety, serious damage to property, or serious disruption to the operations of an activity, as determined by the employing agency.

*Employ* means to engage a person in an activity that is for the benefit of an agency, and includes any hours of work that are suffered or permitted.

*Employee* means a person who is employed—

(1) In an executive agency as defined in section 105 of title 5, United States Code;

(2) As a civilian in a military department as defined in section 102 of title 5, United States Code;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department; or

(4) In a unit of the judicial branch of the Government that has positions in the competitive service.

*Employer*, as defined in section 3(d) of the Act, means any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

*Essential part of administrative or professional functions* means work that is included as an integral part of administrative or professional exempt work. This work is identified by examining the processes involved in performing the exempt function. For example, the processes involved in evaluating a body of information include collecting and organizing information; analyzing, evaluating, and developing conclusions; and frequently, preparing a record of findings and conclusions. Often collecting or compiling information and preparing reports or other records, if divorced from the evaluative function, are nonexempt tasks. When an employee who performs the evaluative functions also performs some or all of these related steps, all such work (for example, collecting background information, recording test results, tabulating data, or typing reports) is included in the employee's exempt duties.

*Executive employee* means an employee who meets the criteria in section 551.205 of this part.

*Exempt area* means any foreign country, or any territory under the jurisdiction of the United States other than the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

*FLSA exempt* means not covered by the minimum wage and overtime provisions of the Act.

*FLSA exemption status* means an employee's designation by the employing agency as either FLSA exempt or FLSA nonexempt from the minimum wage and overtime provisions of the Act.

*FLSA exemption status determination claim* means a claim from a current or former employee challenging the correctness of his or her FLSA exemption status determination.

*FLSA nonexempt* means covered by the minimum wage and overtime provisions of the Act.

*FLSA overtime pay*, for the purpose of § 551.208 of this part, means overtime pay under this part.

*FLSA pay claim* means a claim from a current or former employee concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act.

*Foreign exemption* means a provision of the Act under which the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area.

*Formulation or execution of management programs or policies* means work that involves management programs and policies which range from broad national goals expressed in statutes or Executive orders to specific objectives of a small field office. Employees make policy decisions or participate indirectly, through developing or recommending proposals that are acted on by others. Employees significantly affect the execution of management programs or policies typically when the work involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations furthering the operation of programs and accomplishment of program objectives. Administrative employees engaged in such work typically perform one or more phases of program management (that is, planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls).

*Hours of work* means all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency. Hours of work are creditable for the purposes of determining overtime pay under subpart D of this part. Section 551.401 of subpart D further explains this term. However, whether time is credited as hours of work is determined by considering many factors, such as the rules in subparts D and E of this part, provisions of law, Comptroller General decisions, OPM policy guidance, agency policy and regulations, negotiated agreements, the rules in part 550 of this chapter (for hours of work for travel), and the rules in part 410 of this chapter (for hours of work for training).

*Management or general business function or supporting service*, as distinguished from production functions, means the work of employees who provide support to line managers.

(1) These employees furnish such support by—

(i) Providing expert advice in specialized subject matter fields, such as that provided by management consultants or systems analysts;

(ii) Assuming facets of the overall management function, such as safety management, personnel management, or budgeting and financial management;

(iii) Representing management in such business functions as negotiating and administering contracts, determining acceptability of goods or services, or authorizing payments; or

(iv) Providing supporting services, such as automated data processing, communications, or procurement and distribution of supplies.

(2) Neither the organizational location nor the number of employees performing identical or similar work changes general management, business, or servicing functions into production functions. The work, however, must involve substantial discretion on matters of enough importance that the employee's actions and decisions have a noticeable impact on the effectiveness of the organization advised, represented, or serviced.

*Nonexempt area* means any of the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

*Participation in the executive or administrative functions of a management official* means the participation of employees, variously identified as secretaries, administrative or executive assistants, aides, etc., in portions of the managerial or administrative functions of a supervisor whose scope of responsibility precludes personally attending to all aspects of the work. To support exemption, such employees must be delegated and exercise substantial authority to act for the supervisor in the absence of specific instructions or procedures, and take actions which significantly affect the supervisor's effectiveness.

*Perform work in connection with an emergency* means to perform work that is directly related to resolving or coping with an emergency, or its immediate aftermath, as determined by the employing agency.

*Preserve the claim period* means to establish the period of possible entitlement to back pay by filing a written claim with either the agency employing the claimant during the claim period or with OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay.

*Primary duty* typically means the duty that constitutes the major part (over 50 percent) of an employee's work. A duty constituting less than 50 percent of the work may be credited as the primary duty for exemption purposes provided that duty—

(1) Constitutes a substantial, regular part of a position;

(2) Governs the classification and qualification requirements of the position; and

(3) Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

*Professional employee* means an employee who meets the criteria in section 551.207 of this part.

*Reckless disregard of the requirements of the Act* means failure to make adequate inquiry into whether conduct is in compliance with the Act.

*Recognized organizational unit* means an established and defined organizational entity which has regularly assigned employees and for which a supervisor is responsible for planning and accomplishing a continuing workload. This distinguishes supervisors from leaders who head temporary groups formed to perform assignments of limited duration.

*Situations 1 through 4* means the four basic situations described under Factor I, Nature of Supervisory Responsibility, in the *Federal Wage System Job Grading Standard for Supervisors*. The situations depict successively higher levels of supervisory responsibility and authority for scheduling work operations, planning use of resources to accomplish work, directing subordinates in performing work assignments, and carrying out administrative duties.

*Statute of limitations* means the time frame within which an FLSA pay claim must be filed, starting from the date the right accrued. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations, except in cases of willful violation where the statute of limitations is 3 years.

*Suffered or permitted work* means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

*Supervisory and closely related work* means work that is included in the calculation of exempt work for supervisory positions.

(1) Work is considered closely related to exempt supervisory work if it contributes to the effective supervision of subordinate workers, or the smooth functioning of the unit supervised, or both. Examples of closely related work include the following:

(i) Maintaining various records pertaining to workload or employee performance;

(ii) Performing setup work that requires special skills, typically is not performed by production employees in the occupation, and does not approach the volume that would justify hiring a specially trained employee to perform; and

(iii) Performing infrequently recurring or one-time tasks which are impractical to delegate because they would disrupt normal operations or take longer to explain than to perform.

(2) Activities in which both workers and supervisors are required to engage themselves are considered to be closely related to the primary duty of the position, for example, physical training during tours of duty for firefighting and law enforcement personnel.

*Temporary work or duties* means work or duties an employee must temporarily perform that are not consistent with the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location.

*Title 5 overtime pay,* for the purpose of § 551.208 of this part, means overtime pay under part 550 of this chapter.

*Trainee* means a person who does not meet the definition of employee in this section and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a trainee and, therefore, is not an employee of the Government of the United States for purposes of the Act:

(1) The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;

(2) The training is for the benefit of the individual;

(3) The trainee does not displace regular employees, but, rather, is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

*Volunteer* means a person who does not meet the definition of employee in this section and who volunteers or

donates his or her service, the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

*Willful violation* means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

*Work of an intellectual nature* means work requiring general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work requiring mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting, or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions.

*Work of a specialized or technical nature* means work which requires substantial specialized knowledge of a complex subject matter and of the principles, techniques, practices, and procedures associated with that subject matter field. This knowledge characteristically is acquired through considerable on-the-job training and experience in the specialized subject matter field, as distinguished from professional knowledge characteristically acquired through specialized academic education.

*Workday* means the period between the commencement of the principal activities that an employee is engaged to perform on a given day and the cessation of the principal activities for that day. The term is further explained in § 551.411 of this part.

*Worktime*, for the purpose of determining FLSA exemption status, means time spent actually performing work. This excludes periods of time during which an employee performs no work, such as standby time, sleep time, meal periods, and paid leave.

*Worktime in a representative workweek* means the average percentages of worktime over a period long enough to even out normal fluctuations in workloads and be representative of the job as a whole.

*Workweek* means a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

*Workweek basis* means the unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The Act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.

3. Subpart B is revised to read as follows:

**Subpart B—Exemptions and Exclusions**

Sec.



## Subpart B—Exemptions and Exclusions

### § 551.201 Agency authority.

All employees are presumed to be FLSA nonexempt unless the employing agency makes a determination that the position meets one or more of the exemption criteria of this subpart. The employing agency must exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

### § 551.202 General principles governing exemptions.

In all exemption determinations, the agency must observe the following principles:

(a) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt.

(d) There are groups of General Schedule employees who are FLSA nonexempt because they do not fit any of the exemption categories. These groups include the following:

(1) Nonsupervisory General Schedule employees in equipment operating and protective occupations, and most clerical occupations (see the definition of *participation in the executive or administrative functions of a management official* in subpart A of this part);

(2) Nonsupervisory General Schedule employees performing technician work in positions properly classified below GS–9 (or the equivalent level in other white-collar pay systems) and many, but not all, of those positions properly classified at GS–9 or above (or the equivalent level in other white-collar pay systems); and

(3) Nonsupervisory General Schedule employees at any grade level in occupations requiring highly specialized technical skills and knowledges that can be acquired only through prolonged job training and experience, such as the Air Traffic Control series, GS–2152, or the Aircraft Operations series, GS–2181, unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(e) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. All exempt work, regardless of category, must be considered. The only restriction is that, when the requirements of one category are more stringent, the combination of exempt work must meet the more stringent requirements.

(f) Failure to meet the criteria for exemption under what might appear to be the most appropriate criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who fails to

meet the administrative criteria may be performing exempt executive work.

(g) Although it is normally feasible and more convenient to identify the exemption category, this is not essential. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories which are intermingled and difficult to segregate. This does not preclude exempting the employee, provided the work as a whole clearly meets the other exemption criteria.

(h) The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee.

**§ 551.203 Exemption of General Schedule employees.**

(a) *GS–4 or below.* Any employee in a position properly classified at GS–4 or below (or the equivalent level in other white-collar pay systems) is nonexempt, unless the employee is subject to the foreign exemption in § 551.209.

(b) *GS–5 or above.* Any employee in a position properly classified at GS–5 or above (or the equivalent level in other white-collar pay systems) is exempt only if the employee is an executive, administrative, or professional employee as defined in this subpart, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

**§ 551.204 Exemption of Federal Wage System employees.**

(a) *Nonsupervisory.* A nonsupervisory employee in the Federal Wage System or under other comparable wage systems is nonexempt, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

(b) *Supervisory.* A supervisory employee in the Federal Wage System or under other comparable wage systems is exempt only if the employee is an executive employee as defined in § 551.205, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

**§ 551.205 Executive exemption criteria.**

An *executive employee* is a supervisor or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and regularly directs the work of subordinate employees and meets both of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee—

(1) Has authority to make personnel changes that include, but are not limited to, selecting, removing, advancing in pay, or promoting subordinate employees, or has authority to suggest or recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) *80-percent test.* In addition to the primary duty test that applies to all employees, the following employees must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work to meet the 80-percent test:

(1) Employees in positions properly classified in the General Schedule at GS–5 or GS–6 (or the equivalent level in other white-collar pay systems);

(2) Firefighting or law enforcement employees in positions properly classified in the General Schedule at GS–7, GS–8, or GS–9 who are subject to section 207(k) of title 29, United States Code; and

(3) Supervisors in positions properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

**§ 551.206 Administrative exemption criteria.**

An *administrative employee* is an advisor or assistant to management, a representative of management, or a specialist in a management or general business function or supporting service and meets all four of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee's work—

(1) Significantly affects the formulation or execution of management programs or policies; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) *Nonmanual work.* The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) *Discretion and independent judgment.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS–5 or GS–6 (or the equivalent level in other white-collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions to meet the 80-percent test.

**§ 551.207 Professional exemption criteria.**

A *professional employee* is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) *Primary duty test.* The primary duty test is met if the employee's work consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee; or

(3) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems, analysis, programming, and software engineering or other similar work in the computer software field.

The work must consist of one or more of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; or

(ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

(iii) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(iv) A combination of the duties described in paragraphs (a)(3)(i), (3)(ii), and (3)(iii) of this section, the performance of which requires the same level of skills.

(b) *Intellectual and varied in nature.* The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought processes for satisfactory performance.

(c) *Discretion and independent judgment.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS–5 or GS–6 (or the equivalent level in other white-collar pay systems), must spend 80 percent or more of the worktime in a representative workweek on professional functions and work that is an essential part of those functions to meet the 80-percent test.

**§ 551.208 Effect of performing temporary work or duties on FLSA exemption status.**

*(a) Applicability.*—(1) *When applicable.* This section applies only when an employee must temporarily perform work or duties that are not consistent with the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location. The FLSA exemption status of employees during a period of temporary work or duties must be determined as described in this section.

(2) *When not applicable.* This section does not apply when an employee is detailed to an identical additional position as the employee's position or to a position of the same grade, series code, basic duties, and FLSA exemption status as the employee's position.

(b) *Effect on nonexempt employees.* (1) A nonexempt employee who must temporarily perform work or duties that are not consistent with the employee's official position description remains nonexempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) *30-day test.* The period of temporary work or duties exceeds 30 days; and

(ii) *Exempt work or duty.* The employee's primary duty for the period of temporary work or duties is exempt work or duty as defined in this part; and

(iii) *Positions at GS–7 or above, or at situations 3 or 4.* The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS–7 or above (or the equivalent level in other white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

(2) If a nonexempt employee becomes exempt under the criteria in paragraph (b)(1) of this section—

(i) The employee must be considered exempt for the entire period of temporary work or duties; and

(ii) If the employee received FLSA overtime pay for work performed during the first 30 days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee is now not entitled to the FLSA overtime pay received but may be owed title 5 overtime pay.

(c) *Effect on exempt employees.* (1) An exempt employee not covered by the special provision of paragraph (c)(3) of this section who must temporarily perform work or duties that are not consistent with the employee's official position description remains exempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) *30-day test.* The period of temporary work or duties exceeds 30 days; and

(ii) *Not exempt work.* The employee's primary duty for the period of temporary work or duties is *not* exempt work or duty as defined in this part; and

(iii) *Positions at GS–7 or above, or at situation 3 or 4.* The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS–7 or above (or the equivalent level in other white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

(2) If an exempt employee becomes nonexempt under the criteria in paragraph (c)(1) of this section—

(i) The employee must be considered nonexempt for the entire period of temporary work or duties; and

(ii) If the employee received title 5 overtime pay for work performed during the first 30 days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee may now not be entitled to some or all of the title 5 overtime pay received but may be owed FLSA overtime pay.

(3) Special provision for exempt employees at GS–5 or GS–6, or below situation 3: The exemption status of certain exempt employees who must temporarily perform work or duties that are not consistent with their official position description must be determined on a workweek basis for the period of temporary work or duties. Such employees are exempt employees whose positions (including a position to which the employee is temporarily promoted) are properly classified in the General Schedule at GS–5 or GS–6 (or the equivalent level in other white-collar pay systems), or are properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems). The exemption status determination of these employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for a given workweek *only* if the employee performs exempt work or duties for 80 percent or more of the worktime in that workweek.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for a given workweek *only* if the employee performs nonexempt work or duties for more than 20 percent of the worktime in that workweek.

(d) *Emergency situation.* Notwithstanding any other provisions of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists that directly threatens human life or safety, serious damage to property, or serious disruption to the operations of an activity, and there is no recourse

other than to assign qualified employees to temporarily perform work or duties in connection with the emergency. In such a designated emergency—

(1) The exemption status of a nonexempt employee remains nonexempt whether the employee performs nonexempt work or exempt work during the emergency; and

(2) The exemption status of an exempt employee must be determined on a workweek basis. The exemption status determination of exempt employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for any workweek in which the employee performs exempt work or duties for 80 percent or more of the worktime in a given workweek.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for any workweek in which the employee performs nonexempt work or duties for more than 20 percent of the worktime in a given workweek.

**§ 551.209 Foreign exemption criteria.**

(a) *Application.* When the *foreign exemption* applies, the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area. When an employee meets one of the two criteria in paragraph (b) of this section, the foreign exemption applies until the employee spends any hours of work in any nonexempt area as defined in § 551.102 of this part.

(b) *Foreign exemption applies.* If an employee meets one of the two following criteria, the employee is subject to the foreign exemption of the Act and the minimum wage, overtime, and child labor provisions of the Act do not apply.

(1) The employee is permanently stationed in an exempt area and spends *all* hours of work in a given workweek in one or more exempt areas; or

(2) The employee is not permanently stationed in an exempt area, but spends *all* hours of work in a given workweek in one or more exempt areas.

(c) *Foreign exemption does not apply.* For any given workweek, the minimum wage, overtime, and child labor provisions of the Act apply to an employee permanently stationed in an exempt area who spends *any* hours of work in any nonexempt area. For that workweek, the employee is not subject to the foreign exemption, and the agency must determine the exemption status of such an employee as described paragraphs (c)(1) and (c)(2) of this section. The foreign exemption does not resume until the employee again meets one of the criteria in paragraph (b) of this section.

(1) *Same duties.* If the duties performed during that workweek are consistent with the employee's official position description, the agency must designate the employee the same FLSA exemption status as if the employee were permanently stationed in any nonexempt area.

(2) *Different duties.* If the duties performed during that workweek are not consistent with the employee's official position description—

(i) The agency must first designate the employee the same FLSA exemption status as the employee would have been designated based on the duties included in the employee's official position description if the employee were permanently stationed in any nonexempt area; and

(ii) The agency must determine the employee's exemption status for that workweek by applying § 551.208.

(d) *Resumption of foreign exemption.* When an employee returns to any exempt area from performing any hours of work in any nonexempt area, the employee is not subject to the foreign exemption until the employee meets one of the criteria in paragraph (b) of this section.

**§ 551.210 Exemption of employees receiving availability pay.**

The following employees are exempt from the hours of work and overtime pay provisions of the Act:

(a) A criminal investigator receiving availability pay under section 550.181 of this chapter; and

(b) A pilot employed by the United States Customs Service who is a law enforcement officer as defined in section 5541(3) of title 5, United States Code, and who receives availability pay under section 5545a(i) of title 5, United States Code.

**§ 551.211 Statutory exclusion.**

Customs officers whose exclusive entitlement to overtime pay is governed by section 5 of the Act of Feb. 13, 1911, as amended (19 U.S.C. 261 and 267), are excluded from the hours of work and overtime pay provisions of the FLSA. As used in section 5, the term "customs officer" means a customs inspector, a supervisory customs inspector, a canine enforcement officer, or a supervisory canine enforcement officer.

4. Subpart F is added to read as follows:

**Subpart F—Child Labor**

Sec.
551.601 Minimum age standards.
551.602 Responsibilities.

## Subpart F—Child Labor

**§ 551.601 Minimum age standards.**

(a) *16-year minimum age.* The Act, in section 3(l), sets a general 16-year minimum age, which applies to all employment subject to its child labor provisions, with certain exceptions not applicable here.

(b) *18-year minimum age.* The Act, in section 3(1), also sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

**§ 551.602 Responsibilities.**

(a) *Agencies* must remain cognizant of and abide by regulations and orders published by the Secretary of Labor regarding the employment of individuals under the age of 18 years. These regulations and orders govern the minimum age at which persons under the age of 18 years may be employed and the occupations in which they may be employed. Persons under the age of 18 years must not be employed in occupations or engage in work deemed hazardous by the Secretary of Labor.

(b) *OPM* will decide claims concerning the employment of persons under the age of 18 years. Claims must be filed following the procedures set forth in subpart G of this part.

5. Subpart G is added to read as follows:

**Subpart G—FLSA Claims and Compliance**

Sec.
551.701 Applicability.
551.702 Time limits.
551.703 Avenues of review.
551.704 Claimant's representative.
551.705 Form and content of an FLSA claim.
551.706 Responsibilities.
551.707 Withdrawal or denial of an FLSA claim.
551.708 Finality and effect of OPM FLSA claim decision.
551.709 Availability of information.
551.710 Where to file an FLSA claim with OPM.

## Subpart G—FLSA Claims and Compliance

**§ 551.701 Applicability.**

(a) *Applicable.* This subpart applies to FLSA exemption status determination claims, FLSA pay claims for minimum wage or overtime pay for work performed under the Act, and claims

arising under the child labor provisions of the Act.

(b) *Not applicable.* This subpart does not apply to claims or complaints arising under the equal pay provisions of the Act. The equal pay provisions of the Act are administered by the Equal Employment Opportunity Commission.

**§ 551.702 Time limits.**

(a) *Claims.* A claimant may file an FLSA claim at any time under the child labor provisions of the Act or challenging the correctness of his or her FLSA exemption status determination. A claimant may also file an FLSA claim concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act; however, time limits apply to FLSA pay claims. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations (3 years for willful violations).

(b) *Statute of limitations.* An FLSA pay claim filed on or after June 30, 1994, is subject to the statute of limitations contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code), which imposes a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years. In deciding a claim, a determination must be made as to whether the cause or basis of the claim was the result of a willful violation on the part of the agency.

(c) *Preserving the claim period.* A claimant or a claimant's designated representative may preserve the claim period by submitting a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM. The claimant should retain documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. If a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back from the date the claim was received.

**§ 551.703 Avenues of review.**

(a) *Negotiated grievance procedure (NGP) as exclusive administrative remedy.* If at any time during the claim period, a claimant was a member of a bargaining unit covered by a collective bargaining agreement that did not specifically exclude matters under the Act from the scope of the negotiated grievance procedure, the claimant must use that negotiated grievance procedure as the exclusive administrative remedy for all claims under the Act. There is no right to further administrative review by the agency or by OPM. The remaining sections in this subpart (that is, §§ 551.704 through 551.711) do not apply to such employees.

(b) *Non-NGP administrative review by agency or OPM.* A claimant may file a claim with the agency employing the claimant during the claim period or with OPM regarding matters arising under the Act if, during the entire claim period, the claimant—

(1) Was not a member of a bargaining unit, or

(2) Was a member of a bargaining unit not covered by a collective bargaining agreement, or

(3) Was a member of a bargaining unit covered by a collective bargaining agreement that specifically excluded matters under the Act from the scope of the negotiated grievance procedure.

(c) *Judicial review.* Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court. OPM will not decide an FLSA claim that is in litigation.

**§ 551.704 Claimant's representative.**

A claimant may designate a representative to assist in preparing or presenting a claim. The claimant must designate the representative in writing. A representative has no right to participate in OPM fact-finding. An agency may disallow a claimant's representative who is a Federal employee in any of the following circumstances:

(a) When the individual's activities as a representative would cause a conflict of interest or position;

(b) When the designated representative cannot be released from his or her official duties because of the priority needs of the Government; or

(c) When the release of the designated representative would give rise to unreasonable costs to the Government.

**§ 551.705 Form and content of an FLSA claim.**

(a) *FLSA claim filed with agency.* An FLSA claim filed with an agency should be made according to appropriate agency procedures. At the discretion of the agency, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (b) of this section.

(b) *FLSA claim filed with OPM.* An FLSA claim filed with OPM must be made in writing and must be signed by the claimant or the claimant's representative. Relevant information may be submitted to OPM at any time following the initial submission of a claim to OPM and prior to OPM's decision on the claim. The claim must include the following:

(1) The identity of the claimant (see § 551.706(a)(2) regarding requesting confidentiality) and any designated representative, the agency employing the claimant during the claim period, the position (job title, series, and grade) occupied by the claimant during the claim period, and the current mailing address, commercial telephone number, and facsimile machine number, if available, of the claimant and any designated representative;

(2) A description of the nature of the claim and the specific issues or incidents giving rise to the claim, including the time period covered by the claim;

(3) A description of actions taken by the claimant to resolve the claim within the agency and the results of any actions taken;

(4) A copy of any relevant decision or written response by the agency;

(5) Evidence available to the claimant or the claimant's designated representative which supports the claim, including the identity, commercial telephone number, and location of other individuals who may be able to provide information relating to the claim;

(6) The remedy sought by the claimant;

(7) Evidence, if available, that the claim period was preserved in accordance with § 551.702. The date the claim is received by the agency or OPM becomes the date on which the claim period is preserved;

(8) A statement from the claimant that he or she was or was not a member of a collective bargaining unit at any time during the claim period;

(9) If the claimant was a member of a bargaining unit, a statement from the claimant that he or she was or was not covered by a negotiated grievance procedure at any time during the claim period, and if covered, whether that procedure specifically excluded the claim from the scope of the negotiated grievance procedure;

(10) A statement from the claimant that he or she has or has not filed an action in an appropriate United States court; and

(11) Any other information that the claimant believes OPM should consider.

**§ 551.706 Responsibilities.**

(a) *Claimant.*— (1) *Providing information to OPM.* For all FLSA claims, the claimant or claimant's designated representative must provide any additional information requested by OPM within 15 workdays after the date of the request, unless OPM grants a longer period of time in which to provide the requested information. The disclosure of information by a claimant is voluntary. However, OPM may be unable to render a decision on a claim without the information requested. In such a case, the claim will be denied without further action being taken by OPM. In the case of an FLSA pay claim, it is the claimant's responsibility to provide evidence that the claim period was preserved in accordance with § 551.702 and of the liability of the agency and the claimant's right to payment.

(2) *Requesting confidentiality.* If the claimant wishes the claim to be treated confidentially, the claim must specifically request that the identity of the claimant not be revealed to the agency. Witnesses or other sources may also request confidentiality. OPM will make every effort to conduct its investigation in a way to maintain confidentiality. If OPM is unable to obtain sufficient information to render a decision and preserve the requested confidentiality, OPM will notify the claimant that the claim will be denied with no further action by OPM unless the claimant voluntarily provides written authorization for his or her name to be revealed.

(b) *Agency.* (1) In FLSA exemption status determination claims, the burden of proof rests with the agency that asserts the FLSA exemption.

(2) The agency must provide the claimant with a written acknowledgment of the date the claim was received.

(3) The agency must provide any information requested by OPM within 15 workdays after the date of the request, unless OPM grants a longer period of time in which to provide the requested information.

**§ 551.707 Withdrawal or denial of an FLSA claim.**

(a) *Withdrawal.* A claimant or the claimant's representative may withdraw a claim at any time prior to the issuance of an OPM FLSA claim decision by providing written notice to the OPM office where the claim was filed.

(b) *Denial.* OPM may, at its discretion, deny an FLSA claim if the claimant or the claimant's designated representative fails to provide requested information within 15 workdays after the date of the request, unless OPM grants a longer period of time in which to provide the requested information. OPM may, at its discretion, reconsider a denied claim on a showing that circumstances beyond the claimant's control prevented pursuit of the claim.

**§ 551.708 Finality and effect of OPM FLSA claim decision.**

OPM will send an FLSA claim decision to the claimant or the claimant's representative and the agency. An FLSA claim decision made by OPM is final. There is no further right of administrative appeal. At its discretion, OPM may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision. A decision by OPM under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act. Upon receipt of a decision, the agency employing the claimant during the claim period must take all necessary steps to comply with the decision, including adherence with compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by OPM. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with the decision, and inform them in writing of their right to file an FLSA claim with the agency or OPM.

**§ 551.709 Availability of information.**

(a) Except when the claimant has requested confidentiality, the agency and the claimant must provide to each other a copy of all information submitted with respect to the claim.

(b) When a claimant has not requested confidentiality, OPM will disclose to the parties concerned the information contained in an FLSA claim file. When a claimant has requested confidentiality, OPM will delete any information identifying the claimant. For the purposes of this subpart, *the parties concerned* means the claimant, any representative designated in writing, and any representative of the agency or OPM involved in the proceeding.

(c) Except when the claimant has requested confidentiality or the disclosure would constitute a clearly unwarranted invasion of personal privacy, OPM, upon a request which identifies the individual from whose file the information is sought, will disclose the following information from a claim file to a member of the public:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The remedy sought;

(3) The status of the claim;

(4) The decision on the claim; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

**§ 551.710 Where to file an FLSA claim with OPM.**

An FLSA claim must be filed with the OPM office serving the area where the cause or basis of the claim occurred. Following are OPM addresses and service areas.

**OPM Atlanta Oversight Division**

75 Spring Street SW., Suite 972, Atlanta, GA 30303–3109.

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (except the Virginia locations listed under the Washington, DC Oversight Division).

**OPM Chicago Oversight Division**

230 S. Dearborn Street, DPN 30–6, Chicago, IL 60604–1687.

Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin.

**OPM Dallas Oversight Division**

1100 Commerce Street, Room 4C22, Dallas, TX 75242–9968.

Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming.

**OPM Philadelphia Oversight Division**

600 Arch Street, Room 3400, Philadelphia, PA 19106–1596.

Connecticut, Delaware, Maine, Maryland (except the Maryland locations listed under the Washington, DC Oversight Division), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands.

**OPM San Francisco Oversight Division**

120 Howard Street, Room 760, San Francisco, CA 94105–0001.

Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area

**OPM Washington, DC Oversight Division**

1900 E Street NW., Room 7675, Washington, DC 20415–0001.

**The District of Columbia**

In Maryland: the counties of Charles, Montgomery, and Prince George's.

In Virginia: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and any overseas area

not listed in the service area of another Oversight division.

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Part IV

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

## Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1997–98 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

**DATES:** The comment period for proposed late-season frameworks will end on September 4, 1997.

**ADDRESSES:** Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 12054) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 6 supplement also provided detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 27, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13 and June 6 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 23, 1997, the Service published in the **Federal Register** (62 FR 39712) proposed early-season frameworks for the 1997–98 season. On August 20, 1997, the Service published a fourth document in the **Federal Register** (62 FR 44229) containing final frameworks for early seasons from which wildlife conservation agency officials from the States and Territories may select early-season hunting dates, hours, areas, and limits.

On August 7, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13, June 6, and July 23 **Federal Registers**, to review the status of waterfowl.

This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, hours, areas, and limits. The Service has considered all pertinent comments received through August 7, 1997, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. Comment periods are specified above under **DATES.** The Service will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 25, 1997.

### Presentations at Public Hearing

The Service presented a report on the status of waterfowl. This report is briefly reviewed below as a matter of public information, and is a summary of information contained in the "Status of Waterfowl and Fall Flight Forecast" report.

Most goose and swan populations in North America remain numerically sound and the size of most fall flights will be similar to those of last year. Production of young in 1997 varied regionally based largely on spring weather and habitat conditions. Generally, spring phenology was earlier than normal in much of eastern Canada and this should lead to greater-than-average production for geese nesting there. In the central and western Arctic, spring was cooler than normal and this should reduce production of geese and swans. In the interior of Alaska, a mild spring with only minimal flooding should lead to better-than-average production. Habitat conditions for nesting geese were mostly favorable in southern and eastern Canada and the northcentral and eastern U.S. In some mountainous areas of the western U.S., flooding destroyed some nests.

The 1997 estimate of total ducks in the traditional survey area was 42.6 million birds. The estimate was a 13 percent increase over that in 1996 and 31 percent higher than the long-term average. Abundances of mallards, gadwall, American wigeon, northern shovelers, and northern pintails increased over levels observed in 1996. Estimates for 8 of 10 principal species were above their respective long-term averages, but 2 species (scaup and northern pintails) remained below their averages. The number of ponds in May was similar to that of last year, and was the third highest estimate recorded. In eastern areas of Canada and the U.S., the number of total ducks was similar to that of last year and to the 1990–96 average. Habitats in much of the eastern area were inundated, and may have adversely impacted early-nesting species. The preliminary estimate of the total-duck fall-flight index is a record-high 92 million birds, compared to 90 million last year. The fall flight will include approximately 14.4 million mallards, 14 percent higher than the estimate of 12.6 million in 1996.

During the 1996–97 hunting season, both the number of duck stamps sold and participation by hunters increased slightly compared to the previous year. This marked the fourth consecutive year that duck stamp sales and the number of active hunters increased. Duck harvest increased in three of the four Flyways with proportionally the largest increase occurring in the Central Flyway. A slight decline occurred in the Atlantic Flyway.

From a historical perspective, the number of waterfowl hunters indexed by the number of duck stamps sold, remained far below levels observed during the 1970s. Duck harvest continues to rebound from the record low in 1988. The 1996 estimate of ducks harvested in the U.S. was similar to the last period of liberal harvest regulations in 1979 to 1984. Goose harvest has increased about fourfold over the period of record. Temporal changes in duck and goose harvest closely correspond with the changing status of these groups of waterfowl and with the number of hunters.

Harvest of three of the five most abundant species in the bag increased last season compared with the previous year. Mallards increased 11 percent, gadwall 20 percent, and Canada goose harvest increased 19 percent. Green-

winged teal harvest decreased 9 percent and wood duck harvest remained unchanged from the 1995 hunting season. Overall duck harvest increased 7 percent.

The number of young per adult in the harvest serves as an indicator of reproductive success. Harvest age ratios of mallards increased slightly in 1996. Increases also occurred in age ratios of many prairie-nesting species such as gadwall, blue-winged teal, northern shoveler, pintail, redhead and canvasback. However, age ratios of black ducks, a species which nests primarily in eastern North America, declined; as did greater and lesser scaup age ratios. Age ratios of most species of geese were similar to those of the previous year. Atlantic brant were a notable exception; the age ratio was substantially lower than for the 1995 season.

**Review of Comments Received at Public Hearing**

One individual presented a statement at the August 7, 1997, public hearing. His comments are summarized below.

Mr. Robert McDowell, representing the Atlantic Flyway Council expressed support for the "liberal" regulatory alternative this year, except that the Flyway preferred to have a 2-bird bag limit on pintails rather than 3 as proposed. The Flyway will maintain a 42 percent reduction in the harvest of black ducks that was achieved since restrictions went into effect in 1983. He asked that the Service adopt the suite of regulatory alternatives currently offered until there is a compelling reason to change. The Flyway supports the Adaptive Harvest Management process and encourages continued progress towards the development of eastern mallard population models. He thanked the Service for its decision to allow compensatory days to those states that are closed to Sunday hunting. He asked the Service to review the interim canvasback harvest strategy and consider possible liberalizations in the future. He supported the Service's proposals regarding greater snow geese, Atlantic brant, tundra swans, and modifications to the regular and special Canada goose seasons. However, he did expressed disappointment over the Service's denial of the Council's request for a brief 10-day season, with a 1-bird daily bag on Canada geese in the New England region. He argued that the expected harvest of migrant Maritime geese would be extremely limited and indicated that there is no evidence that this population has declined.

**Flyway Council Recommendations and Written Comments**

The preliminary proposed rulemaking which appeared in the March 13 **Federal Register**, opened the public-comment period for late-season migratory game bird hunting regulations. The Service has received recommendations from all four Flyway Councils. Late-season comments are summarized and discussed in the order used in the March 13 **Federal Register**. Only the numbered items pertaining to late seasons for which written comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1996–97 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1996–97.

**1. Ducks**

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

*A. General Harvest Strategy*

*Council Recommendations:* The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended adopting the "liberal" alternative for the 1997–98 duck hunting season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" alternative with a modification of the framework closing date. Specific details are discussed in *B. Framework Dates.*

The Atlantic and Pacific Flyway Councils further recommended that the four regulatory packages adopted by the Service in the July 23, 1997, **Federal Register** be maintained until such time as the Service and Flyway Councils agree that there is compelling justification for modification.

*Service Response:* Beginning in 1995, the Service, Flyway Councils, and States introduced a new approach to the regulation of duck harvests, called Adaptive Harvest Management (AHM). An integral part of this harvest-management approach is the cooperative establishment of a set of regulatory alternatives that includes specified season lengths and bag limits for very restrictive, restrictive, moderate, and liberal seasons. The alternatives established for this year's hunting season were the result of extensive discussions with the Flyway Councils and States since last January, as well as involvement by the public during an open comment period.

The estimate of total ducks this year is 16 percent higher than the long-term average and several species are at record levels. The outlook for production is excellent and the 1997 fall flight will be comparable to those observed during the 1970s. Based on favorable input, the Service plans to continue use of the AHM approach initiated last year. The AHM strategy for 1997 prescribes the "liberal" regulatory alternative based on high mallard and pond numbers.

The framework closing date recommended by the Lower-Region Regulations Committee of the Mississippi Flyway Council differed from those in the "liberal" alternative established in the July 23 **Federal Register**. The Service's proposal is consistent with the "liberal" alternative outlined in the July 23 **Federal Register** and was supported by the other three Flyway Councils as well as the Mississippi Flyway Council's Upper-Region Regulations Committee.

*B. Framework Dates*

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended an experimental extension of the framework closing date to January 31 to allow evaluation of the extension, as long as this does not affect regulations/framework packages in non-participating states.

*Service Response:* In the July 23 **Federal Register**, the Service outlined the reasons why it did not support an expansion of the framework dates at this time.

*G. Special Seasons/Species Management*

*i. Black Ducks*

*Council Recommendations:* The Atlantic Flyway Council recommended that the individual Atlantic Flyway States achieve a 42 percent reduction in their black duck harvest during the 1997–98 season compared with the 1977–81 base-line harvest.

*Service Response:* The Service agrees with the Atlantic Flyway Council's recommendation and acknowledges the Council's concern for the population status of black ducks. Black duck populations remain below the North

American Wildlife Management Plan goal and while the decline seems to have halted, little increase is evident. The Service believes the harvest restrictions identified in the 1983 Environmental Assessment should be maintained until a revised harvest strategy is developed.

*ii. Canvasbacks*

The Service continues to support the canvasback harvest strategy adopted in 1994. Current population and habitat status suggests that a daily bag limit of 1 canvasback during the 1997–98 season will result in a harvest within levels allowed by the strategy. The Service believes that it has insufficient experience with this harvest strategy to consider modifications at this time, and is concerned that an overly aggressive strategy could precipitate a return to closed seasons. The Service, as stated in previous **Federal Registers**, is continuing to monitor the performance of the canvasback harvest strategy adopted in 1994. The Service is particularly interested in harvest information from the coming duck season, which will have the longest season lengths offered in decades. Prior to next summer, the Service plans to assess how well observed harvests and population abundance were predicted by the strategy. The Service notes that the development of the canvasback strategy took a several years to develop and required a lot of technical work and consensus-building. The resulting strategy appears to have been fairly successful at meeting the major needs expressed:

(1) provides a consistent harvest strategy (i.e., minimizing closed seasons as previously experienced),

(2) provides hunting opportunity over a wide geographic area,

(3) does not include seasons within seasons, and

(4) provides for a fairly stabilized population.

A complete reassessment of the strategy is not a high priority given other pressing issues with AHM. The extent of the assessment will be tempered by the amount of staff time needed to address higher-priority issues.

*iii. Pintails*

*Council Recommendations:* The Atlantic Flyway Council recommended a 2-bird daily bag limit for pintails in the 1997–98 hunting season instead of the 3-bird daily bag limit prescribed by the Interim Pintail Harvest Strategy.

*Service Response:* In the July 23 **Federal Register**, the Service adopted the Interim Strategy for Northern Pintail Harvest Regulations detailed in the June 6 and July 23 **Federal Registers**. The Service adopted this interim strategy with the understanding that it would be replaced by a more fully adaptive approach at the earliest opportunity and because it addressed key Service concerns outlined in the July 22, 1996, **Federal Register** (61 FR 37994). For the 1997–98 hunting season, the interim harvest strategy prescribes a 3-bird daily bag limit for pintails in all four Flyways. The Service reminds the Atlantic Flyway that, as always, individual States may be more restrictive than approved frameworks.

*iv. High Plains Management Unit*

*Council Recommendations:* The Central Flyway Council recommended minor administrative changes to the High Plains Mallard Management Unit boundary in North Dakota and South Dakota for boundary clarification and wetland development.

*Service Response:* The Service concurs.

**4. Canada Geese**

*Council Recommendations:* The Atlantic Flyway Council recommended the Service not open the regular hunting season on Atlantic Population (AP) Canada geese during the 1997–98 season except that a 10-day, 1-bird daily bag limit be allowed during November in that portion of New England, east of the Connecticut River and in eastern Long Island, New York, where geese from the Maritime segment of the AP population may occur.

The Atlantic Flyway Council also recommended the establishment of regular season frameworks in Maine, West Virginia, South Carolina, Georgia, and Florida, and those portions of New York, Pennsylvania, Maryland, Virginia, and North Carolina that have been determined not to contain AP Canada geese. The Council's recommended frameworks would consist of a 70-day season with a 3-bird daily bag limit for Maine, West Virginia, South Carolina, Georgia, and Florida with framework dates of October 1 to February 15; a 70-day season with a 3-bird daily bag limit for designated portions of Virginia, Maryland, Pennsylvania, and New York with framework dates of November 15 to February 15; and a 46-day season with a 3-bird daily bag limit in designated portions of North Carolina with a framework of October 1 to November 15.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs.

The Pacific Flyway Council recommended several changes in Canada goose frameworks. In southwest Washington and northwest Oregon, the Council recommended increasing the bag and possession limits on cackling Canada geese from 2/4 to 3/6 respectively in the regular season. In the Balance-of-the-State Zone in California, the Council recommended that the season for cackling Canada geese be extended by two weeks and the possession limit be expanded from 1 to 2 birds. In western New Mexico, the Council recommended increasing the bag and possession limit from 2/4 to 3/6, respectively. Regarding dusky Canada goose harvest quotas, the Council recommended establishment of a 85 dusky Canada goose quota in Washington's Lower Columbia River Special Goose Management Area and a 165 dusky Canada goose quota in Oregon's Special Goose Management Area. Finally, the Council recommended a minor revision the Western Washington Goose Management Area 2.

*Service Response:* The Service does not support the Atlantic Flyway Council's request for a November season (10 days), 1-bird daily bag limit, in New England, east of the Connecticut River, including eastern Long Island, NY, because this stock of geese has been considered part of the Atlantic Population and a management plan describing this Maritime Population of Canada geese has not yet been developed. The Service first requested that a Plan be developed in 1995 and encouraged the Council to work cooperatively with the Canadian Provinces to gather more data, review key population parameters, and establish an appropriate harvest strategy. Although the Service does not oppose the delineation of a Maritime population, if warranted, more information is needed to separate the Atlantic Population into two units. A management plan should set population goals, identify monitoring programs and contain some means to evaluate its status and the effects of harvest. The Service reiterates its longstanding policy to manage Canada geese on a population basis, guided by cooperatively developed management plan.

Regarding the Atlantic Flyway Council's request to establish a regular season on Canada geese in portions of the Flyway determined not to contain AP geese, the Service believes that it is appropriate to conduct such a season provided that it is consistent with the Southern James Bay Population (SJBP) Management Plan, and maintains those restrictions currently in place in several

areas (Pennsylvania and South Carolina).

Thus, the Service proposes allowing the following: in designated areas of Pennsylvania, Maryland, and Virginia, a 40-day season, 2-bird daily bag, between November 15 and January 14 and the continuation of existing experimental 30-day special late seasons with a 5-bird daily bag between January 15 and February 15; in designated areas of New York, a 70-day season with 2-bird daily bag between November 15 and January 31; in designated areas of North Carolina, a 46-day season with a 2-bird daily bag between October 1 and November 15; in West Virginia, a 70-day season with a 3-bird daily bag between October 1 and January 31; in South Carolina, Georgia, and Florida, a 70-day season with a 5-bird daily bag limit between October 1 and February 15.

The Service does not support the Council's request for a regular season in Maine because a management plan for managing the harvest of Maritime Canada geese has not been developed. The Service does not believe that it is appropriate to include Maine in this proposal for a regular season guided by the SJBP Management Plan. The Service believes that it would be inconsistent to establish a season without having a management plan for the entire New England area. Therefore, the Service again asks that the Council work to develop a management plan for Maritime Canada geese.

The Service concurs with the changes proposed by the Pacific Flyway Council.

*C. Special Late Seasons*

*Council Recommendations:* The Atlantic Flyway Council recommended that New York be allowed to expand its existing experimental late season area to new areas along the north shore of Long Island and in other areas of southeastern New York.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a special late season for four counties in Indiana. The Committee also recommended that the experimental special late season in Michigan's Southern Michigan Goose Management Unit (GMU) be extended for one additional year to allow completion of the final report, and that the bag limit be increased from 2 to 5. The Committee further recommended a new experimental late season be initiated in the Central Michigan GMU with a 5-bird daily bag limit.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that in areas where Canada goose populations of special concern exist, the Service should closely monitor any cumulative effects that special seasons may have on non-target populations.

The Pacific Flyway Council recommended several changes in the special late-season frameworks. In southwest Washington, the Council recommended increasing the bag and possession limits on cackling Canada geese from 2/4 to 3/6, respectively, in the late season. Regarding dusky Canada geese, the Council recommended changing the late-season framework opening date to January 24 in Washington's Lower Columbia River Special Goose Management Area.

*Service Response:* Regarding the Mississippi Flyway Council's recommendation to allow an experimental special late Canada goose season in four counties in Indiana beginning in 1997, the Service does not support the experimental season. The criteria for special seasons require two years of data collection prior to the beginning of an experiment and that the data demonstrate that the season likely will meet the criterion regarding proportion of migrants in the special-season harvest. Of the four counties proposed, no data were presented for one county and only one year of data for another. The limited data available (a total of only 12 collars were seen, 3 of which were migrant collars) indicate that about 25 percent of the harvest would be migrant geese, which exceeds the 20 percent level in the special-season criteria.

The Service concurs with the changes proposed by the Pacific Flyway Council.

**5. White-fronted geese**

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended extending the season length from 70 to 86 days and changing the framework closing date from January 31 to February 15.

The Pacific Flyway Council recommends that hunting frameworks for 1997–98 be changed by adding 14 days and 1 bird to the daily bag and possession limits for dark geese in the Balance-of-the-State Zone in California.

*Service Response:* The Service proposes to continue with the same frameworks as last year in 1997–98. Whitefronts in the Central and Mississippi Flyways previously have been managed as separate segments of the Midcontinent Population under separate management plans. Recent information has suggested that Midcontinent whitefronts should be managed as one population, and revision/combination of the management plans into one plan is under way. The Central Flyway Council and Canada both are considering liberalizations in harvest opportunity for Midcontinent whitefronts, but are delaying recommendations for such changes until the new management plan is in place. The Service believes that changes in the Mississippi Flyway also should be deferred until the new management plan is in place, when all recommendations for liberalizing harvest opportunity can be considered in light of the goals, objectives, and harvest strategies in the new plan.

The Service concurs with the changes proposed by the Pacific Flyway Council.

**6. Brant**

*Council Recommendations:* The Atlantic Flyway Council recommended a 50-day Atlantic brant season with a 2-bird daily bag limit.

*Service Response:* The Service concurs with the recommendation.

**7. Snow and Ross's Geese**

*Council Recommendations:* The Atlantic Flyway Council recommended a daily bag and possession limit of 10 and 30, respectively.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that in a further effort to increase snow goose harvest, the Service implement regulatory changes, as suggested by the Arctic Goose Joint Venture Management Board, for the 1998–99 hunting season.

The Central Flyway Council recommended a March 10 framework closing date, except for the Rainwater Basin Light Goose Area (West) in Nebraska, with no limit on the number of season splits in the East-tier States.

The Pacific Flyway Council recommended expanding the possession limit to twice the daily bag limit in the Balance-of-the-State Zone in California.

*Service Response:* The Service believes that the extension of the ending framework date for hunting of light geese until March 10 in Nebraska's Rainwater Basin Area may pose a threat to the management and welfare of other migratory bird species during the spring migration period. In response to these concerns, the Central Flyway Council proposed an experimental hunting season in the eastern portion of this important spring staging area. This proposal contains the use of both temporal and spacial constraints on hunting activity and results in a hunting strategy that would allow for evaluation of any negative impacts to related to disturbance and distribution of other migratory birds, disease management, eco-tourism, and endangered species. The Service supports this experimental

season, provided an evaluation component is developed and implemented. The Service will cooperate with the Nebraska Game and Parks Commission to develop and complete assessments of this experimental season.

The Service does not support the Central Flyway proposal for East Tier States that would allow for an unlimited number of splits during light goose seasons. Alternatively, the Service supports increasing the allowed number of season segments from 2 to 3. This increase would result in a more consistent use of split-season options among all flyways. The Service also believes that the ability to divide light goose seasons into 3 segments provides adequate flexibility to use the current season length of 107 days.

The Service concurs with the changes proposed by the Pacific Flyway Council.

**Public Comment Invited**

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and wants to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability of specific, reliable data on this year's status before mid-June for migratory shore and upland game birds and some waterfowl, and before late July for most waterfowl. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to public interest.

**Comment Procedure**

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

The Service will consider all relevant comments received and will try to acknowledge received comments, but may not provide an individual response to each commenter.

**NEPA Consideration**

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1997." Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

**Endangered Species Act Consideration**

As in the past, the Service will design hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations will be included in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final frameworks will reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES.**

**Executive Order (E.O.) 12866**

This proposed rule is economically significant and will be reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

**Regulatory Flexibility Act**

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

**Paperwork Reduction Act**

The Department examined these proposed regulations under the Paperwork Reduction Act of 1995. The various information collection requirements are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance number 1018–0015.

**Unfunded Mandates Reform Act**

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**PART 20—[AMENDED]**

The authority citation for Part 20 is revised to read as follows:

**AUTHORITY:** 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a-j.

Dated: August 19, 1997.

**William L. Leary,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

**Proposed Regulations Frameworks for 1997–98 Late Hunting Seasons on Certain Migratory Game Birds**

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1997, and March 10, 1998.

**General**

*Dates:* All outside dates noted below are inclusive.

*Shooting and Hawking (taking by falconry) Hours:* Unless otherwise specified, from one-half hour before sunrise to sunset daily.

*Possession Limits:* Unless otherwise specified, possession limits are twice the daily bag limit.

*Definitions:* For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese - snow (including blue) geese and Ross' geese.

*Area, Zone, and Unit Descriptions:* Geographic descriptions related to late-season regulations are contained in a later portion of this document.

*Area-Specific Provisions:* Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

*Compensatory Days in the Atlantic Flyway:* In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

**Atlantic Flyway**

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

*Ducks, Mergansers, and Coots*

*Outside Dates:* Between October 1 and January 20.

*Hunting Seasons and Duck Limits:* 60 days and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 3 pintails, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 1 canvasback.

*Closures:* The season on harlequin ducks is closed.

*Sea Ducks:* In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

*Merganser Limits:* The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

*Coot Limits:* The daily bag limit is 15 coots.

*Lake Champlain Zone, New York:* The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

*Zoning and Split Seasons:* Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

*Canada Geese*

*Season Lengths, Outside Dates, and Limits:* The Canada goose season is suspended throughout the Flyway except as noted below. Unless specified otherwise, seasons may be split into two segments.

Connecticut: A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Florida: A 70 day season may be held between November 15 to February 15, with 5 geese per day.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a limit of 5 Canada geese per day.

Maryland: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season in designated areas of western Maryland may be held from January 15 to February 15, with 5 geese per day.

Massachusetts: In the Central Zone and a portion of the Coastal Zone, a season may be held from January 15 to February 15, with 5 geese per day.

New Jersey: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with 5 geese per day.

New York: In designated areas, a 70-day season may be held between November 15 to January 30, with 2 geese per day. An experimental season may be held between January 15 and February 15, with 5 geese daily in all or portions of Chenung, Tioga, Broone, Sullivan, Westchester, Nassau, Suffolk, Orange, Putnam, and Rockland Counties.

North Carolina: A 46-day season may be held between October 1 and November 15, with 2 geese per day in that portion of the State outside the Northeast Hunt Unit.

Pennsylvania: In desinated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. In Erie, Mercer, and Butler Counties, a 70-day season may be held between October 1 and January 31, with 2 geese per day. In Crawford County, a 35-day season may be held between October 1 and January 20, with 1 goose per day.

An experimental season may be held in the designated areas of western Pennsylvania from January 15 to February 15 with 5 geese per day.

Rhode Island: An experimental season may be held in a designated area from January 15 to February 15, with 5 geese per day,

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a daily bag limit of 5 Canada geese per day.

Virginia: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season may be held between January 15 to February 15, with 5 geese per day, in all areas west of Interstate 95.

West Virginia: a 70-day seaosn may be held between October 1 and January 31, with 3 geese per day.

*Light Geese*

*Season Lengths, Outside Dates, and Limits:* States may select a 107-day season between October 1 and March 10, with 10 geese per day and 30 in possession. States may split their seasons into three segments.

*Brant*

*Season Lengths, Outside Dates, and Limits:* States may select a 50-day season between October 1 and January 20, with 2 brant per day. States may split their seasons into two segments.

**Mississippi Flyway**

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

*Ducks, Mergansers, and Coots*

*Outside Dates:* Between the Saturday nearest October 1 (October 4) and the Sunday nearest January 20 (January 18).

*Hunting Seasons and Duck Limits:* 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 3 pintails, 2 wood ducks, 1 canvasback, and 2 redheads.

*Merganser Limits:* The daily bag limit is 5, only 1 of which may be a hooded merganser.

*Coot Limits:* The daily bag limit is 15 coots.

*Zoning and Split Seasons:* Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

*Pymatuning Reservoir Area, Ohio:* The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

*Geese*

*Split Seasons:* Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

*Season Lengths, Outside Dates, and Limits:* States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 4) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 4) and March 10. The daily bag limit is 10 light geese, 3 Canada geese, 2 white-fronted geese, and 2 brant. The possession limit for light geese is 30. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 16 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 74,600 birds. Limits are 2 Canada geese daily and 10 in possession.

(a) North Zone - The season for Canada geese will close after 78 days or when 8,400 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone - The season for Canada geese will close after 78 days or when 12,500 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone - The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 26,400 and 5,700 birds, respectively. The season for Canada geese in each zone will close after 78 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 78 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 19,200 birds.

(a) Posey County - The season for Canada geese will close after 65 days or when 3,450 birds have been harvested, or when the harvest at the Hovey Lake Fish and Wildlife Area exceeds 1,725 birds, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 65 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone - The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 16,500 birds. Of the 16,500-bird quota, 10,750 birds will be allocated to the Ballard Reporting Area and 3,135 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 41,700 birds.

(a) North Zone - The season for Canada geese may extend for 16 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 16 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 41 days or when 1,760 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 43 days or when 560 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 50 days or when 750 birds have been harvested,

whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone - The season for Canada geese may extend for 20 days. The daily bag limit is 1 Canada goose the first 9 days and 2 Canada geese thereafter.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

(e) Central Michigan GMU - An experimental special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Fergus Falls/Alexandria Zone - A special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The season may be split into 3 segments, provided that one segment of at least 9 days occurs prior to October 15. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee

(a) Northwest Zone - The season for Canada geese will close after 79 days or when 6,150 birds have been harvested, whichever occurs first. The season may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 64 days, and the harvest will be limited to 750 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese. In lieu of the quota and tagging requirement above, the State may select either a 50-day season with a 1-bird daily bag limit or a 35-day season with a 2-bird daily bag limit for this Zone.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 55,700 birds.

(a) Horicon Zone - The framework opening date for all geese is September 20. The harvest of Canada geese is limited to 27,600 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 20. The harvest of Canada geese is limited to 900 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is September 27. The harvest of Canada geese is limited to 22,700 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 93 days and the daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 22,200 birds.

*Additional Limits:* In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

*Quota Zone Closures:* When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes (if applicable) Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

**Central Flyway**

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

*Ducks, Mergansers, and Coots*

*Outside Dates:* Between October 4 and January 18.

*Hunting Seasons and Duck Limits:*

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days and a daily bag limit of 6 ducks, including no more than 1 mottled duck, 1 canvasback, 2 redheads, 2 female mallards, 2 wood ducks, 3 pintails, and 5 male mallards. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13).

(2) Remainder of the Central Flyway: 74 days and a daily bag limit of 6 ducks, including no more than 1 mottled duck, 1 canvasback, 2 redheads, 2 female mallards, 2 wood ducks, 3 pintails, and 5 male mallards.

*Merganser Limits:* The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser.

*Coot Limits:* The daily bag limit is 15 coots.

*Zoning and Split Seasons:* Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

*Geese*

*Split Seasons:* Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

*Season Lengths, Outside Dates, and Limits:* States may select seasons not to exceed 107 days; except for dark geese, which may not exceed 86 days in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas. For dark geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 4) and January 31, except in the Western Goose Zone of Texas, where the closing date is the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 4) and March 10, except in the Rainwater Basin Light Goose Area (West) of Nebraska where the closing date is the Sunday nearest February 15 (February 15). The daily bag and possession limits for light geese are 10 and 40, respectively.

Dark goose daily bag limits in States and goose management zones within States, may be as follows:

Kansas, Nebraska, Oklahoma, and South Dakota: 2 dark geese, including no more than 1 white-fronted goose.

Colorado, Montana, New Mexico and Wyoming: 4 dark geese.

North Dakota: 2 dark geese.

Texas: For the Western Goose Zone, the daily bag limit is 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

For the Eastern Goose Zone, the daily bag limit is 2 dark geese, including no more than 1 white-fronted goose.

**Pacific Flyway**

*Ducks, Mergansers, Coots, and Common Moorhens*

*Hunting Seasons and Duck Limits:* Concurrent 107 days and daily bag limit of 7 ducks, including no more than 2 female mallards, 3 pintails, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

*Coot and Common Moorhen Limits:* The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

*Outside Dates:* Between the Saturday nearest October 1 (October 4) and the Sunday nearest January 20 (January 18).

*Zoning and Split Seasons:* Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

*Colorado River Zone, California:* Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

*Geese*

*Season Lengths, Outside Dates, and Limits:* Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the Sunday nearest January 20 (January 18), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

*Split Seasons:* Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation, by each participating State.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

*Closures:* There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2.

California

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79-day season may be selected. Limits may not include more than 3 geese per day and 6 in possession, of which not more than 2 daily and 4 in possession may be white-fronted geese and not more than 1 daily or 2 in possession may be cackling Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit - The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone - The daily bag limit on dark geese is 4.

Nevada

Lincoln and Clark County Zone - The daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone - In the Special Canada Goose Management Area, except for

designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3 and may include 3 cackling Canada geese.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 3 and may include 3 cackling Canada geese.

Wyoming: The daily bag limit is 4 dark geese.

*Quota Zones:* Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 3 cackling Canada geese.

In the designated areas of the Washington Quota Zone, a special late Canada goose may be held between February 5 and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended the Sunday closest to March 1.

*Swans*

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (October 4). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1998, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 7) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

*Tundra Swans*

In Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued.

—In South Dakota, no more than 1,500 permits may be issued.

**Area, Unit and Zone Descriptions**

*Ducks (Including Mergansers) and Coots*

Atlantic Flyway

*Connecticut*

North Zone: That portion of the State north of I-95.

South Zone: Remainder of the State.

*Maine*

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I-95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

*Massachusetts*

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

*New Hampshire*

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

*New Jersey*

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and

extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

*New York*

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

*Pennsylvania*

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

*Vermont*

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

*West Virginia*

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

*Alabama*

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

*Illinois*

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

South Zone: The remainder of Illinois.

*Indiana*

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

*Iowa*

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

*Kentucky*

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

*Louisiana*

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

*Michigan*

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I-75/U.S. 23 to the U.S. 23 exit at

Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

*Mississippi*

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

*Missouri*

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

*Ohio*

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

*Tennessee*

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

*Wisconsin*

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

*Kansas*

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S, 183, south along U.S. 183 to KS 4, east along KS 4 to I-135, south along I-135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

*Montana (Central Flyway Portion)*

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

*Nebraska*

High Plains Zone: That portion of the State west of Highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 93 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya Paha County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34; west to U.S. 136; east on U.S. 135 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northeasterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler County; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

*New Mexico (Central Flyway Portion)*

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

*North Dakota*

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I-94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

*Oklahoma*

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I-40, east along I-40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I-35, north along I-35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

*South Dakota*

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I-90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of South Dakota.

*Texas*

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

*Wyoming (Central Flyway portion)*

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

Pacific Flyway

*Arizona—Game Management Units (GMU) as follows:*

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

*California*

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

*Idaho*

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

*Nevada*

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

*Oregon*

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

*Utah*

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

*Washington*

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

*Geese*

Atlantic Flyway

*Connecticut*

Same zones as for ducks.

*Maryland*

Special Regular and Late Seasons for Canada Geese: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

*Massachusetts*

Special Area for Canada Geese: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

*New Hampshire*

Same zones as for ducks.

*New Jersey*

Special Area for Canada Geese:

North - that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South - that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River (at Pleasant Mills); then north (upstream) along the Mullica River to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then south along Route 49 to Route 50; then east along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

*New York*

Special Late Season Area for Canada Geese: all or portions of Chenung, Tioga, Broone, Sullivan, Westchester, Nassau, Suffolk, Orange, Putnam, and Rockland Counties—See State regulations for detailed description.

Regular Season Area in Southwest for Canada Geese: all of Allegany, Cattaraugus, and Chautaugua Counties; that area of Erie, Wyoming and Niagara Counties lying south and west of a continuous line extending from the City of Niagara Falls east and then south along US Route 62 to Interstate Route 290, then south along Route 290 to Exit 50 of the NYS Thruway, then east along the Thruway to Exit 49, then south along NYS Route 78 to State Route 20 in Depew, then east along Route 20 to State Route 77 in Darien Center, then south along Route 77 to Java Center, then south along State Route 98 to the Cattaraugus County line; and that area of Steuben and Chemung Counties lying south of State Route 17.

*North Carolina*

Regular Season for Canada Geese: Statewide, except for Northampton County and the Northeast Hunt Unit - Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

*Pennsylvania*

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

Regular Season Area for Canada Geese: Area from New York State line west of U.S. Route 220 to intersection of I-180, west of I-180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I-81, west of I-81 to intersection of I-83, west of I-83 to I-283, west of I-283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I-83, west of I-83 to Maryland State line, except for the Counties of Erie, Mercer, Butler, and Crawford.

Special Late Season Area for Canada Geese: Same as Regular Season Area and the area from New York State line east of U.S. Route 220 to intersection of I-180, east of I-180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I-81, north of I-81 to intersection of I-80, north of I-80 to New Jersey State line.

*Rhode Island*

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

*South Carolina*

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

*Virginia*

Regular and Special Late Season Area for Canada Geese: All areas west of I-95.

Back Bay Area—Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

*West Virginia*

Same zones as for ducks.

Mississippi Flyway

*Alabama*

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

*Arkansas*

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

*Illinois*

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

*Indiana*

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

*Iowa*

Same zones as for ducks.

*Kentucky*

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

*Michigan*

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the South Zone north of the Southern Michigan GMU, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

*Minnesota*

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I-94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH

28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

*Missouri*

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

*Ohio*

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SJBP Zone: That portion of the State encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I-280, south along I-280 to I-80, and east along I-80 to the Pennsylvania border.

*Tennessee*

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

*Wisconsin*

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Central Flyway

*Colorado (Central Flyway Portion)*

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

*Kansas*

Light Geese

Unit 1: That portion of Kansas east of a line beginning at the intersection of the Nebraska border and KS 99, extending south along KS 99 to I-70 to U.S. 75, south on U.S. 75 to U.S. 54, west on U.S. 54 to KS 99, and then south on KS 99 to the Oklahoma border.

Unit 2: The remainder of Kansas, lying west of Unit 1.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border

to KS 68, KS 68 to U.S 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

*Montana (Central Flyway Portion)*

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

*Nebraska*

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junciton of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and NS 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

*New Mexico (Central Flyway Portion)*

Dark Geese

Middle Rio Grande Valley Unit: Sierra County and that portion of Socorro County lying south of the Sevilleta National Wildlife Refuge Boundary.

Remainder: The remainder of the Central Flyway portion of New Mexico.

*North Dakota*

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

*South Dakota*

Canada Geese

Unit 1: Statewide except for Units 2 and 3.

Unit 2: Brule, Buffalo, Campbell, Dewey, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Corson County east of State Highway 65.

Unit 3: Charles Mix and Gregory Counties.

*Texas*

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

*Wyoming (Central Flyway Portion)*

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

Pacific Flyway

*Arizona*

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

*California*

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the

Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

*Colorado (Pacific Flyway Portion)*

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

West Central Area: Archuleta, Delta, Dolores, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale and Mineral Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

*Idaho*

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

*Montana (Pacific Flyway Portion)*

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

*Nevada*

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Remainder-of-the-State Zone: The remainder of Nevada.

*New Mexico (Pacific Flyway Portion)*

North Zone: The Pacific Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific Flyway portion of New Mexico located south of I-40.

*Oregon*

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I-5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I-5; then south on I-5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

*Utah*

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

*Washington*

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I-182, west o I-182 to the Franklin-Benton County line; those parts of Benton County south of I-182 and I-82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark, except portions south of the Washougal River, Cowlitz, Pacific, and Wahkiakum Counties.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I-5 Bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty

to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

*Wyoming (Pacific Flyway Portion): See State Regulations.*

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

*Swans*

Central Flyway

*South Dakota:* Beadle, Brookings, Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Kingsbury, Marshall, McPherson, Potter, Roberts, Spink, Sully, and Walworth Counties.

Pacific Flyway

*Montana (Pacific Flyway Portion)*

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

*Nevada*

Open Area: Churchill, Lyon, and Pershing Counties.

*Utah*

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I-80/84, west of I-15, and north of I-80.

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Part V

# Department of the Treasury

## Office of Foreign Assets Control

31 CFR Part 500, et al.

Reporting and Procedures Regulations; Consolidation and Standardization of Information Collection Provisions, Etc.; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 501, 505, 515, 535, 536, 550, 560, 575, 585, 590, 595, and 596

# Reporting and Procedures Regulations: Consolidation of Information Collections; Annual Reports on Blocked Assets and Retained Transfers; Reports on Rejected Transfers; Reports on Litigation; Procedure for Releasing Funds Believed to Have Been Blocked Due to Mistaken Identity; Procedure For Removal From the Lists of Blocked Persons and Vessels

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendments.

**SUMMARY:** The Office of Foreign Assets Control ("OFAC") is issuing the Reporting and Procedures Regulations. This new part simplifies—by consolidating and standardizing in a single part—common provisions on collections of information in existing OFAC regulations. Those collections are eliminated from the individual parts of 31 CFR chapter V. This final rule includes an initial and annual requirement to report on blocked assets or retained funds transfers—as well as periodic reports on funds transfers rejected by U.S. financial institutions—for administrative and foreign policy formulation purposes. The rule also requires reports on U.S. litigation and other dispute resolution proceedings where the proceedings may affect blocked assets or funds retained by banks that have stopped violative transfers. In addition, new procedures are set forth for persons seeking the unblocking of funds they believe have been blocked due to mistaken identity, or seeking administrative review of their designation or that of a vessel as blocked. Finally, the reporting requirements and licensing and other procedures of the new part are made applicable to transactions that have become subject to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control. The final rule also makes conforming amendments and technical corrections to the various parts of 31 CFR chapter V.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Daniel A. Yorks, Blocked Assets Division (tel.: 202/622–2440); Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

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## Background

The Office of Foreign Assets Control ("OFAC") is adding a new part 501 to 31 CFR chapter V ("chapter V"), consolidating and standardizing general information collections and license application and other procedures currently authorized under the Paperwork Reduction Act of 1995 (the "PRA") and contained in the Foreign Assets Control Regulations (part 500), Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries (part 505), Cuban Assets Control Regulations (part 515), Iranian Assets Control Regulations (part 535), Narcotics Trafficking Sanctions Regulations (part 536), Libyan Sanctions Regulations (part 550), Iranian Transactions Regulations (part 560), Iraqi Sanctions Regulations (part 575), Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations (part 585), Unita (Angola) Sanctions Regulations (part 590), Terrorism Sanctions Regulations (part 595), and Terrorism List Governments Sanctions Regulations (part 596). Part 501 also makes these information collections and licensing and other procedures applicable to transactions that have become subject to economic sanctions programs for which implementation and administration are delegated to OFAC, but for which implementing regulations have not yet been issued. This is intended to provide standardized procedures for requesting licenses and other actions, as well as common recordkeeping and reporting requirements, that will be familiar to the public and immediately available upon the imposition of future sanctions programs delegated to OFAC for implementation.

Section 501.601 consolidates OFAC recordkeeping requirements and standardizes record retention periods at 5 years from the date of a transaction subject to the prohibitions in chapter V and 5 years from the date property blocked or retained (see § 596.504(b) of part 596) under chapter V is unblocked or released. Section 501.602 consolidates provisions requiring reports at OFAC's demand concerning transactions or property subject to the prohibitions in chapter V. These provisions were previously found in subpart F of the individual parts of chapter V.

New § 501.603 establishes a comprehensive reporting system for property blocked pursuant to chapter V or retained pursuant to § 596.504(b) of the Terrorism List Governments Sanctions Regulations, 31 CFR part 596 (the "TLGSR"). Section 501.603 imposes an affirmative obligation to report information regarding such property within 10 days of the date the property is blocked or funds retained. Reports must thereafter be filed on a cumulative and comprehensive annual basis with respect to blocked property or retained funds. The reporting requirement with respect to blocked property applies to any form of tangible or intangible "property" (as defined in the individual parts contained in chapter V) that is blocked pursuant to chapter V. The first annual report is due on September 30, 1997.

The initial and annual reporting requirement in § 501.603 replaces the current requirements contained in subparts E and F of the individual parts of chapter V for registration by any

person, including financial institutions (which term includes the terms "banking institution" in parts 500, 515, and 550, "depository institution" in part 515, "domestic bank" in parts 500, 515, 535, and 550, "financial institution" in part 596, "United States depository institution" in part 560, and "U.S. financial institution" in parts 536, 575, 585, and 595), of blocked property with OFAC and for designating a person to contact for information concerning blocked property. The annual report form (Form TDF 90–22.50) is available by calling the fax-on-demand service maintained by the Office of Foreign Assets Control at 202/622–0077, or by downloading the form from the "OFAC Press Releases and Miscellaneous Documents" file library ("FAC_MISC") located on the Government Printing Office's Federal Bulletin Board Online via GPO Access (Internet site: http://fedbbs.access.gpo.gov/libs/fac_misc.htm). The report form is also added as an appendix to this document, but will not be published in chapter V. OFAC invites and will consider on a case-by-case basis requests to submit the information required in the annual report in alterative formats. The reporting requirements of § 501.603 are necessary to monitor compliance with regulatory requirements, to address issues involving U.S. government and private claims, and to support related diplomatic negotiations.

New § 501.604 requires U.S. financial institutions to report funds transfers that are rejected where the funds themselves are not blocked under chapter V, but where the processing of the transfer would nonetheless facilitate an underlying transaction that is prohibited under other provisions contained in chapter V. Examples of instances wherein funds are rejected and this reporting requirement is applicable include funds transfer instructions (1) referencing a blocked vessel in the absence of references to blocked parties or financial institutions, (2) sending funds to a person in Iraq, (3) transferring unlicensed gifts or charitable donations from the Government of Syria or Sudan to a U.S. person, (4) crediting Iranian accounts on the books of a U.S. financial institution, and (5) making unauthorized transfers from U.S. persons to Iran or the Government of Iran. This reporting requirement is necessary to monitor compliance with regulatory requirements and replaces the current requirement in § 596.603 of the TLGSR that financial institutions report rejected funds transfers pursuant to that section.

New § 501.605 requires that parties involved in litigation, arbitration, or other binding alternative dispute resolution proceedings in the United States on behalf of or against persons whose property is blocked or required to be retained under chapter V—or where the outcome of any proceeding may affect blocked property or retained funds—provide notice of the proceedings to OFAC, as well as copies of certain documents pertaining to the proceedings. They must also notify OFAC of certain judicial or similar actions that may affect blocked property or retained funds, and notify the court or other adjudicatory body of applicable regulatory restrictions on transfers of blocked property or retained funds. This reporting requirement is necessary to ensure that blocked property or retained funds are not intentionally or inadvertently transferred by judicial or similar action except as authorized by OFAC. This requirement also replaces identical reporting requirements previously contained in specific licenses authorizing payment of attorneys' fees by blocked persons from unblocked sources.

New § 501.606 makes these reporting requirements in subpart C of part 501 applicable to transactions subject to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

Sections 501.801–501.805 include most of the material previously contained in subpart H of the individual parts of chapter V governing licensing procedures and procedures relating to administrative decisions; amendments, modifications, or revocations of licenses; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts.

Section 501.801 provides procedures for requesting specific licenses, including application procedures under those statements of licensing policy contained in subpart E of the individual parts in chapter V, which note the availability of specific licenses for particular categories of transactions but do not establish requirements for the submission of specific information.

Information collection provisions that require production of specified documentation unique to a given general license or statement of licensing policy will continue to be authorized separately under the PRA. Examples include statements of licensing policy contained in subpart E of the individual parts in chapter V that require the submission of particular, specified documents and/or information in license applications; quarterly reports by U.S. persons on certain Iran-related oil transactions by foreign affiliates pursuant to § 560.603 of chapter V; and censuses of blocked property and claims previously conducted under sanctions programs administered against Cambodia, Vietnam, and Libya.

This final rule institutes new administrative procedures in § 501.806 for requesting the unblocking of funds believed to have been blocked due to mistaken identity. New administrative procedures are also set forth in § 501.807 for persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable. Denial of an application for removal from the list of designees subject to the applicable prohibitions of chapter V (see appendices A, B, and C to chapter V) constitutes final agency action for purposes of judicial review. These procedures standardize and codify collections of information for these purposes that were previously made by individual requests for specific licenses.

New § 501.808 makes these license application and other procedures in subpart D of part 501 applicable to transactions that have become subject to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control, but for which implementing regulations have not yet been issued.

This final rule also makes a technical correction to the civil penalty provisions of each affected sanctions program to note that the Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required adjustments to civil penalties, but did not "amend" the underlying statutes authorizing imposition of those penalties. These changes are made to § 701(a) of parts 500, 515, 535, 550, 560, 575, 585, 590, and 595.

Since this final rule involves a foreign affairs function, Executive Order 12886 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

**Paperwork Reduction Act**

The Reporting and Procedures Regulations are being issued without prior notice and public comment procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507),

the collections of information contained in the Regulations have been submitted to and approved by the Office of Management and Budget ("OMB") pending public comment, and have been assigned control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Collections of information previously authorized are contained in §§ 501.601–501.602 and 501.801–501.805. Section 501.601 relates to the maintenance of records and § 501.602 relates to OFAC demands for information. These provisions were previously contained in subpart F of the individual parts of chapter V. Sections 501.801–501.805 relate to licensing, decisionmaking, amendment, modification or revocation, rulemaking, and document request procedures previously set forth in subpart H of the individual parts of chapter V.

The new collections of information are contained in §§ 501.603, 501.604, 501.605, 501.806, and 501.807. Section 501.603 imposes reporting requirements pertaining to blocked assets and retained funds transfers. This information is required by OFAC to monitor compliance with regulatory requirements, to support diplomatic negotiations concerning the targets of sanctions, and to support settlement negotiations addressing U.S. claims. Section 501.604 requires the filing of reports for compliance purposes by U.S. financial institutions where a funds transfer is not required to be blocked but is rejected because the underlying transaction is otherwise prohibited. Section 501.605 requires reporting of information pertaining to litigation, arbitration, and other binding alternative dispute resolution proceedings in the United States to prevent the intentional or inadvertent transfer through such proceedings of blocked property or retained funds. Section 501.806 sets forth the procedures to be followed by a person seeking to have funds released at a financial institution if the person believes that the funds were blocked due to mistaken identity. Section 501.807 sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

The likely respondents and recordkeepers affected by the information collections contained in part 501 are financial institutions, business organizations, and legal representatives.

The estimated total annual reporting and/or recordkeeping burden: 10,000 hours. The estimated annual burden per respondent/record keeper varies from thirty minutes to 10 hours, depending on individual circumstances, with an estimated average of 1.25 hours. Estimated number of respondents and/or record keepers: 8,000. Estimated annual frequency of responses: 1–12.

Comments are invited on: (a) Whether these new or restated collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project, control number 1505–0164, Washington, DC '20503, with a copy to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, D.C. 20220. Any such comments should be submitted not later than October 24, 1997. Comments on aspects of this final rule other than those involving collections of information subject to the PRA should not be sent to OMB.

**List of Subjects**

*31 CFR Part 500*

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Exports, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions, Trusts and estates, Vietnam.

*31 CFR Part 501*

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Reporting and recordkeeping requirements

*31 CFR Part 505*

Administrative practice and procedure, Banks, banking, COCOM, Communist countries, Exports, Finance, Foreign trade, Penalties, Reporting and recordkeeping requirements.

*31 CFR Part 515*

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

*31 CFR Part 535*

Administrative practice and procedure, Banks, banking, Blocking of assets, Currency, Foreign investment in the United States, Iran, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

*31 CFR Part 536*

Administrative practice and procedure, Banks, banking, Blocking of assets, Narcotics trafficking, Penalties, Reporting and recordkeeping requirements, Specially designated narcotics traffickers, Transfer of assets.

*31 CFR Part 550*

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions.

*31 CFR Part 560*

Administrative practice and procedure, Agriculture commodities, Banks, banking, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

*31 CFR Part 575*

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Terrorism, Travel restrictions.

*31 CFR Part 585*

Administrative practice and procedure, Banks, banking, Blocking of assets, Bosnian Serbs, Exports, Federal Republic of Yugoslavia (Serbia and Montenegro), Foreign trade, Imports, Intellectual property, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Shipping, Telecommunications, Transfer of assets, Vessels.

*31 CFR Part 590*

Administrative practice and procedure, Angola, Exports, Foreign trade, National Union for the Total Independence of Angola, Penalties, Reporting and recordkeeping requirements, Shipping, UNITA, Vessels.

*31 CFR Part 595*

Administrative practice and procedure, Banks, banking, Blocking of assets, Penalties, Reporting and recordkeeping requirements, Specially designated terrorists, Terrorism, Transfer of assets.

*31 CFR Part 596*

Administrative practice and procedure, Banks, banking, Cuba, Penalties, Iran, Iraq, Libya, North Korea, Reporting and recordkeeping requirements, Sudan, Syria, Terrorism, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

## PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 is revised to read as follows:

**Authority:** 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

1a. The heading of subpart A is revised to read as follows:

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 500.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 500.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

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### Subpart B—Prohibitions

3. Section 500.201 is amended by adding new paragraph (e) to read as follows:

**§ 500.201 Transactions involving designated foreign countries or their nationals; effective date.**

* * * * *

(e) When a transaction results in the blocking of funds at a banking institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

### Subpart C—General Definitions

4. The note at the end of § 500.306 is amended by adding a sentence to the end of the note to read as follows:

**§ 500.306 Specially designated national.**

* * * * *

**Note to § 500.306:** * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

### Subpart E—Licenses, Authorizations and Statements of Licensing Policy

5. Section 500.508 is amended by removing paragraph (f) and by adding a note to the end of the section to read as follows:

**§ 500.508 Payments to blocked accounts in domestic banks.**

* * * * *

**Note to § 500.508:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 500.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 500.701 [Amended]**

7. Section 500.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

### Subpart H—Procedures

8. Section 500.801 is revised to read as follows:

**§ 500.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 500.802—500.806 and 500.809 [Removed]**

8a. Sections 500.802 through 500.806 and 500.809 are removed.

**§§ 500.807 and 500.808 [Redesignated as §§ 500.802 and 500.803]**

8b. Sections 500.807 and 500.808 are redesignated as §§ 500.802 and 500.803, respectively.

### Subpart I—Miscellaneous Provisions

9. Section 500.901 is revised to read as follows:

**§ 500.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

10. Part 501 is added to read as follows:

## PART 501—REPORTING AND PROCEDURES REGULATIONS

### Subpart A—Relation of This Part to Other Parts in This Chapter

Sec.

501.101 Relation of this part to other parts in this chapter.

### Subpart B—Definitions

501.301 Definitions.

### Subpart C—Reports

501.601 Records and recordkeeping requirements.
501.602 Reports to be furnished on demand.
501.603 Reports on blocked property.
501.604 Reports by U.S. financial institutions on rejected funds transfers.
501.605 Reports on litigation, arbitration, and dispute resolution proceedings.

**Authority:** 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

## Subpart A—Relation of This Part to Other Parts in This Chapter

### § 501.101 Relation of this part to other parts in this chapter.

This part sets forth standard reporting and recordkeeping requirements and license application and other procedures governing transactions regulated pursuant to other parts codified in this chapter, as well as to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control. Substantive prohibitions and policies particular to each economic sanctions program are not contained in this part but are set forth in the particular part of this chapter dedicated to that program, or, in the case of economic sanctions programs not yet implemented in regulations, in the applicable executive order or other authority. License application procedures and reporting requirements set forth in this part govern transactions undertaken pursuant to general or specific licenses, the criteria for which are set forth in subpart E of the individual parts in this chapter. Statements of licensing policy contained in subpart E of the individual parts in this chapter, however, may contain additional information collection provisions that require production of specified documentation unique to a given general license or statement of licensing policy.

## Subpart B—Definitions

### § 501.301 Definitions.

Definitions of terms used in this part are found in subpart C of the part within this chapter applicable to the relevant application, record, report, procedure or transaction. In the case of economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control but for which regulations have not yet been issued, the definitions of terms in this part are governed by definitions contained in the implementing statute or Executive order.

## Subpart C—Reports

### § 501.601 Records and recordkeeping requirements.

Except as otherwise provided, every person engaging in any transaction subject to the provisions of this chapter shall keep a full and accurate record of each such transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property blocked pursuant to the provisions of this chapter or funds transfers retained pursuant to § 596.504(b) of this chapter shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

### § 501.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Director, Office of Foreign Assets Control, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. The Director may require that such reports include the production of any books of account, contracts, letters or other papers connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

### § 501.603 Reports on blocked property.

(a) *Who must report*—(1) *Holders of blocked property.* Any person, including a financial institution, holding property blocked pursuant to this chapter must report. The requirement includes financial institutions that receive and block payments or transfers. This requirement is mandatory and applies to all U.S. persons (or persons subject to U.S. jurisdiction in the case of parts 500 and 515 of this chapter) who have in their possession or control any property or interests in property blocked pursuant to this chapter.

(2) *Primary responsibility to report.* A report may be filed on behalf of a holder of blocked property by an attorney, agent, or other person. Primary responsibility for reporting blocked property, however, rests with the actual holder of the property, or the person exercising control over property located outside the United States, with the following exceptions: primary responsibility for reporting any trust assets rest with the trustee; and primary responsibility for reporting real property rests with any U.S. co-owner, legal representative, agent, or property manager in the United States. No person is excused from filing a report by reason of the fact that another person has submitted a report with regard to the same property, except upon actual knowledge of the report filed by such other person. Reports filed are regarded as privileged and confidential.

(3) *Financial institutions.* For purposes of this section, the term "financial institution" shall include a banking institution, domestic bank, United States depository institution, financial institution, or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *What must be reported*—(1) *Initial reports*—(i) *When reports are due.* Reports are required to be filed within 10 business days from the date that property becomes blocked. This reporting requirement includes payments or transfers that are received and blocked by financial institutions.

(ii) *Contents of reports.* Initial reports on blocked property shall describe the owner or account party, the property, its location, any existing or new account number or similar reference necessary to identify the property, actual or estimated value and the date it was blocked, and shall include the name and

address of the holder, along with the name and telephone number of a contact person from whom compliance information can be obtained. If the report is filed by a financial institution and involves the receipt of a payment or transfer of funds which are blocked by the financial institution, the report shall also include a photocopy of the payment or transfer instructions received and shall confirm that the payment has been deposited into a new or existing blocked account which is labeled as such and is established in the name of, or contains a means of clearly identifying the interest of, the individual or entity subject to blocking pursuant to the requirements of this chapter.

(2) *Annual reports*—(i) *When reports are due.* A comprehensive report on all blocked property held as of June 30 of the current year shall be filed annually by September 30. The first annual report is due September 30, 1997.

(ii) *Contents of reports.* Annual reports shall be filed using Form TDF 90–22.50, Annual Report of Blocked Property. Copies of Form TDF 90–22.50 may be obtained directly from the Office of Foreign Assets Control, by calling the fax-on-demand service maintained by the Office of Foreign Assets Control at 202/622–0077, or by downloading the form from the "OFAC Press Releases and Miscellaneous Documents" file library ("FAC__MISC") located on the Government Printing Office's Federal Bulletin Board Online via GPO Access (Internet site: http://fedbbs.access.gpo.gov/libs/fac__misc.htm). Photocopies of the report form may be used. Requests to submit the information required on Form TDF 90–22.50 in an alternative format developed by the reporter are invited and will be considered by the Office of Foreign Assets Control on a case-by-case basis. A copy of reports filed using form TDF 90–22.50 or in alternative formats must be retained for the reporter's records.

(c) *Reports on retained funds pursuant to § 596.504(b) of this chapter.* The reporting requirements set forth in this section are applicable to any financial institution retaining funds pursuant to § 596.504(b) of this chapter, except that the account name shall reflect the name of the person whose interest required retention of the funds.

(d) *Where to report.* All reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW—Annex, Washington, DC 20220.

**§ 501.604 Reports by U.S. financial institutions on rejected funds transfers.**

(a) *Who must report.* Any financial institution that rejects a funds transfer where the funds are not blocked under the provisions of this chapter, but where processing the transfer would nonetheless violate, or facilitate an underlying transaction that is prohibited under, other provisions contained in this chapter, must report. For purposes of this section, the term "financial institution" shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *Rejected transfers.* Examples of transactions involving rejected funds transfers include funds transfer instructions:

(1) Referencing a blocked vessel but where none of the parties or financial institutions involved in the transaction is a blocked person;

(2) Sending funds to a person in Iraq;

(3) Transferring unlicensed gifts or charitable donations from the Government of Syria or Sudan to a U.S. person;

(4) Crediting Iranian accounts on the books of a U.S. financial institution; and

(5) Making unauthorized transfers from U.S. persons to Iran or the Government of Iran.

(c) *When reports are due.* Reports are required to be filed within 10 business days by any financial institution rejecting instructions to execute payments or transfers involving underlying transactions prohibited by the provisions of this chapter.

(d) *What must be reported.* The report shall include the name and address of the transferee financial institution, the date of the transfer, the amount of the payment transfer, and a photocopy of the payment or transfer instructions received, and shall state the basis for the rejection of the transfer instructions. The report shall also provide the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained.

(e) *Where to report.* Reports must be filed with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW—Annex, Washington, DC 20220.

**§ 501.605 Reports on litigation, arbitration, and dispute resolution proceedings.**

(a) U.S. persons (or persons subject to the jurisdiction of the United States in the case of parts 500 and 515 of this chapter) participating in litigation, arbitration, or other binding alternative dispute resolution proceedings in the United States on behalf of or against persons whose property or interests in property are blocked or whose funds have been retained pursuant to § 596.504(b) of this chapter, or when the outcome of any proceeding may affect blocked property or retained funds, must:

(1) Provide notice of such proceedings upon their commencement or upon submission or receipt of documents bringing the proceedings within the terms of the introductory text to this paragraph (a);

(2) Submit copies of all pleadings, motions, memoranda, exhibits, stipulations, correspondence, and proposed orders or judgments (including any proposed final judgment or default judgment) submitted to the court or other adjudicatory body, and all orders, decisions, opinions, or memoranda issued by the court, to the Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, within 10 days of filing, submission or issuance. This paragraph (a)(2) shall not apply to discovery requests or responses, documents filed under seal, or requests for procedural action not seeking action dispositive of the proceedings (such as requests for extension of time to file); and

(3) Report by immediate facsimile transmission to the Chief Counsel, Office of Foreign Assets Control, at facsimile number 202/622–1911, the scheduling of any hearing or status conference in the proceedings whenever it appears that the court or other adjudicatory body may issue an order or judgment in the proceedings (including a final judgment or default judgment) or is considering or may decide any pending request dispositive of the merits of the proceedings or of any claim raised in the proceedings.

(b) The reporting requirements of paragraph (a) of this section do not apply to proceedings to which the Office of Foreign Assets Control is a party.

(c) Persons initiating proceedings subject to the reporting requirements of this section must notify the court or other adjudicatory body of the restrictions set forth under the applicable part in this chapter governing the transfer of blocked property or funds retained pursuant to § 596.504(b) of this chapter, including the prohibition on any unlicensed attachment, judgment, decree, lien, execution, garnishment or other judicial process with respect to

any property in which, on or after the applicable effective date, there existed an interest of any person whose property and property interests were subject to blocking pursuant to this chapter or were subject to retention pursuant to § 596.504(b) of this chapter.

**§ 501.606 Reporting and recordkeeping requirements applicable to economic sanctions programs.**

The reporting and recordkeeping requirements set forth in this subpart are applicable to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

## Subpart D—Procedures

**§ 501.801 Licensing.**

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this chapter. All such licenses are set forth in subpart E of each part contained in this chapter. General licenses may also be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to prohibitions contained in economic sanctions programs the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control but which are not yet codified in this chapter. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in this chapter, or to prohibitions the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control, which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this chapter or sanctions programs that have been delegated to the Director of the Office of Foreign Assets Control for implementation and administration may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application, except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference in such application. Applicants are required to supply their taxpayer identifying number pursuant to 31 U.S.C. 7701, which number may be used for purposes of collecting and reporting on any delinquent amounts arising out of the applicant's relationship with the United States Government. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate division or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

**§ 501.802 Decisions.**

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

**§ 501.803 Amendment, modification, or revocation.**

The provisions of this part and any rulings, licenses (whether general or specific), authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

**§ 501.804 Rulemaking.**

(a) All rules and other public documents are issued by the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

**§ 501.805 Rules governing availability of information.**

(a) The records of the Office of Foreign Assets Control which are required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published at 31 CFR part 1.

(b) The records of the Office of Foreign Assets Control which are required by the Privacy Act (5 U.S.C. 552a) to be made available to an

individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with this chapter may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, or by calling 202/622–2480.

**§ 501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity.**

When a transaction results in the blocking of funds at a financial institution pursuant to the applicable regulations of this chapter and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the following administrative procedures:

(a) Any person who is a party to the transaction may request the release of funds which the party believes to have been blocked due to mistaken identity.

(b) Requests to release funds which a party believes to have been blocked due to mistaken identity must be made in writing and addressed to the Office of Foreign Assets Control, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, or sent by facsimile transmission to 202/622–1657.

(c) The written request to release funds must include the name, address, telephone number, and (where available) fax number of the party seeking the release of the funds. For individuals, the inclusion of a social security number is voluntary but will facilitate resolution of the request. For corporations or other entities, the application should include its principal place of business, the state of incorporation or organization, and the name and telephone number of the appropriate person to contact regarding the application.

(d) A request to release funds should include the following information, where known, concerning the transaction:

(1) The name of the financial institution in which the funds are blocked;

(2) The amount blocked;

(3) The date of the blocking;

(4) The identity of the original remitter of the funds and any intermediary financial institutions;

(5) The intended beneficiary of the blocked transfer;

(6) A description of the underlying transaction including copies of related documents (e.g., invoices, bills of lading, promissory notes, etc.);

(7) The nature of the applicant's interest in the funds; and

(8) A statement of the reasons why the applicant believes the funds were blocked due to mistaken identity.

(e) Upon receipt of the materials required by paragraph (d) of this section, OFAC may request additional material from the applicant concerning the transaction pursuant to § 501.602.

(f) Following review of all applicable submissions, the Director of the Office of Foreign Assets Control will determine whether to release the funds. In the event the Director determines that the funds should be released, the Office of Foreign Assets Control will direct the financial institution to return the funds to the appropriate party.

(g) For purposes of this section, the term "financial institution" shall include a banking institution, depository institution or United States depository institution, domestic bank, financial institution or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

**§ 501.807 Procedures governing removal of names from appendices A, B, and C to this chapter.**

Persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable, may seek to have the designation rescinded pursuant to the following administrative procedures:

(a) A specially designated national ("SDN"), specially designated terrorist ("SDT"), or specially designated narcotics trafficker ("SDNT") (collectively, a "designated person"), or a person owning a majority interest in a blocked vessel, may request disclosure of the factual basis for designation and, subject to the limitations contained in paragraph (c) of this section, review factual materials relied upon by the Office of Foreign Assets Control in designating the person or vessel.

(b) Requests to review such information must be made in writing and addressed to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

(c) The Office of Foreign Assets Control will deny access to documents that are classified pursuant to Executive Order No. 12958 or similar Executive orders, or to documents that the Office deems privileged, or that the Office determines would not otherwise be available by law to a party in litigation with the Office. Similarly, the Office may redact materials to protect confidential or privileged information.

(d) Following a review of the basis of designation, a designated person or person owning a majority interest in a blocked vessel may submit arguments or evidence that the person believes refutes the basis for designation, or may propose remedial steps on its part, including corporate reorganization, resignation of position(s) in a blocked organization or similar steps, which it believes would negate the basis for designation. A person owning a majority interest in a blocked vessel may propose the sale of the vessel, with the proceeds to be placed into a blocked interest-bearing account after deducting the costs incurred while the vessel was blocked and the costs of the sale.

(e) After making a written submission, a designated person or person seeking the unblocking of a vessel may request a meeting with the Director of the Office of Foreign Assets Control; however, such meetings are not required, and the Director may, at his discretion, decline to conduct such meetings prior to making a review pursuant to this section.

(f) The information submitted by the designated person or person seeking the unblocking of a vessel will be reviewed by the Director, who may request clarifying, corroborating, or other additional information.

(g) For purposes of judicial review, a decision pursuant to this section constitutes a final agency action.

**§ 501.808 License application and other procedures applicable to economic sanctions programs.**

Upon submission to the Office of Management and Budget of an amendment to the overall burden hours for the information collections imposed under this part, the license application and other procedures set forth in this subpart are applicable to economic sanctions programs for which implementation and administration have been delegated to the Office of Foreign Assets Control.

## Subpart E—Paperwork Reduction Act

**§ 501.901 Paperwork Reduction Act notice.**

The information collection requirements in subparts C and D have been approved by the Office of Management and Budget ("OMB")

under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

1. The authority citation for part 505 is revised to read as follows:

**Authority:** 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

**§ 505.40 [Amended]**

2. Section 505.40 is amended by revising the reference to "§§ 500.601 and 500.602" to read "§§ 501.601 and 501.602".

3. Section 505.60 is revised to read as follows:

**§ 505.60 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see § 500.802 and subpart D of part 501 of this chapter.

## PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

**Authority:** 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 515.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 515.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart B—Prohibitions

3. Section 515.201 is amended by adding new paragraph (e) to read as follows:

**§ 515.201 Transactions involving designated foreign countries or their nationals; effective date.**

* * * * *

(e) When a transaction results in the blocking of funds at a banking institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

### Subpart C—General Definitions

4. The note at the end of § 515.306 is amended by adding a sentence to the end of the note to read as follows:

**§ 515.306 Specially designated national.**

* * * * *

**Note to § 515.306:** * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Section 515.508 is amended by removing paragraph (f) and by adding a note to the end of the section to read as follows:

**§ 515.508 Payments to blocked accounts in domestic banks.**

* * * * *

**Note to § 515.508:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 515.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 515.701 [Amended]**

7. Section 515.701(a) introductory text is amended by removing the words "as amended by" and by adding in their place the words "as adjusted by".

### Subpart H—Procedures

8. Section 515.801 is revised to read as follows:

**§ 515.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 515.802–500.806 and 515.809 [Removed]**

8a. Sections 515.802 through 515.806 and 515.809 are removed.

**§§ 515.807 and 515.808 [Redesignated as §§ 515.802 and 515.803]**

8b. Sections 515.807 and 515.808 are redesignated as §§ 515.802 and 515.803, respectively.

### Subpart I—Miscellaneous Provisions

9. Section 515.901 is revised to read as follows:

**§ 515.901 Paperwork Reduction Act notice.**

Collection of information on TDF 90–22.39, "Declaration, Travel to Cuba," has been approved by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0118. For approval by OMB under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 535 is revised to read as follows:

**Authority:** 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 110; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; and E.O.

12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 535.101 is amended by removing the first two sentences of paragraph (a) and adding a new sentence in their place to read as follows:

**§ 535.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart E—Licenses, Authorizations and Statements of Licensing Policy

3. Section 535.508 is amended by removing paragraph (f) and by adding a note to the end of the section to read as follows:

**§ 535.508 Payments to blocked accounts in domestic banks.**

* * * * *

**Note to § 535.508:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

4. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 535.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 535.701 [Amended]**

5. Section 535.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

6. Subpart H is revised to read as follows:

### Subpart H—Procedures

**§ 535.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

### Subpart I—Miscellaneous Provisions

7. Section 535.905 is revised to read as follows:

**§ 535.905 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

1. The authority citation for part 536 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 536.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 536.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart B—Prohibitions

3. Section 536.201 is amended by designating the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

**§ 536.201 Prohibited transactions involving blocked property.**

* * * * *

(b) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

### Subpart C—General Definitions

4. Section 536.312 is amended by adding a note to the end of the section to read as follows:

**§ 536.312 Specially designated narcotics traffickers.**

* * * * *

**NOTE TO § 536.312:** Please refer to the appendices at the end of this chapter for listings of persons determined to fall within this definition who have been designated pursuant to this part. Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Section 536.503 is amended by revising paragraph (a) and by adding a note to the end of the section to read as follows:

**§ 536.503 Payments and transfers to blocked accounts in U.S. financial institutions.**

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

* * * * *

**NOTE TO § 536.503:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 536.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart H—Procedures

7. Section 536.801 is revised to read as follows:

**§ 536.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 536.802–536.804 and 536.806 [Removed]**

7a. Sections 536.802 through 536.804 and 536.806 are removed.

**§ 536.805 [Redesignated as § 536.802]**

7b. Section 536.805 is redesignated as § 536.802.

**Subpart I—Paperwork Reduction Act**

8. Section 536.901 is revised to read as follows:

**§ 536.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. App. 1514; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

**Subpart A—Relation of this Part to Other Laws and Regulations**

2. Section 550.101 is amended by removing the first two sentences of paragraph (a) and adding a new sentence in their place to read as follows:

**§ 550.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

**Subpart B—Prohibitions**

3. Section 550.209 is amended by adding new paragraph (c) to read as follows:

**§ 550.209 Prohibited transactions involving property in which the Government of Libya has an interest; transactions with respect to securities.**

* * * * *

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

**Subpart C—Definitions**

4. The note at the end of § 550.304 is amended by adding a sentence to the end of the note to read as follows:

**§ 550.304 Government of Libya.**

* * * * *

Note to § 550.304: * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

**Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

5. Section 550.511 is amended by removing paragraph (g) and redesignating paragraph (h) as paragraph (g), by removing the words "paragraph (g) of this section" from the last sentence of newly designated paragraph (g) and adding in their place the words "the note to this section", and by adding a note to the end of the section to read as follows:

**§ 550.511 Payments and transfers to blocked accounts in domestic banks.**

* * * * *

Note to § 550.511: Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

**Subpart F—Reports**

**§ 550.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

**Subpart G—Penalties**

**§ 550.701 [Amended]**

7. Section 550.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

**Subpart H—Procedures**

8. Section 550.801 is revised to read as follows:

**§ 550.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 550.802–550.804 and 500.806 [Removed]**

8a. Sections 550.802 through 550.804 and 500.806 are removed.

**§§ 550.805 and 550.807 [Redesignated as §§ 550.802 and 550.803]**

8b. Sections 550.805 and 550.807 are redesignated as §§ 550.802 and 550.803, respectively.

**Subpart I—Miscellaneous**

9. Section 550.901 is revised to read as follows:

**§ 550.901 Paperwork Reduction Act notice.**

The information collection requirements in § 550.560(d) have been approved by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0093. For approval by OMB under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa-9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356.

**Subpart A—Relation of This Part to Other Laws and Regulations**

2. Section 560.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 560.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter, including part 535 of this chapter, "Iranian Assets Control Regulations," with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart F—Reports

3. Section 560.601 is revised to read as follows:

**§ 560.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

**§ 560.602 [Removed and reserved]**

3a. Section 560.602 is removed and reserved.

### Subpart G—Penalties

**§ 560.701 [Amended]**

4. Section 560.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

### Subpart H—Procedures

5. Section 560.801 is revised to read as follows:

**§ 560.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 560.802–560.804 and 560.807 [Removed]**

5a. Sections 560.802 through 560.804 and 560.807 are removed.

**§§ 560.805 and 560.806 [Redesignated as §§ 560.802 and 560.803]**

5b. Sections 560.805 and 560.806 are redesignated as §§ 560.802 and 560.803, respectively.

### Subpart I—Paperwork Reduction Act

6. Section 560.901 is revised to read as follows:

**§ 560.901 Paperwork Reduction Act notice.**

The specific information collection requirements in § 560.603 have been approved by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505–0106. For approval by OMB under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 575—IRAQI SANCTIONS REGULATIONS

1. The authority citation for part 575 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (50 U.S.C. 1701 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1992 Comp., p. 317; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 575.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 575.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart B—Prohibitions

3. Section 575.201 is amended by adding new paragraph (c) to read as follows:

**§ 575.201 Prohibited transactions involving property in which the Government of Iraq has an interest; transactions with respect to securities.**

* * * * *

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

### Subpart C—General Definitions

4. The note at the end of § 575.306 is amended by adding a sentence to the end of the note to read as follows:

**§ 575.306 Government of Iraq.**

* * * * *

**Note to § 575.306:** * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Section 575.503 is amended by removing paragraph (h) and by adding a note to the end of the section to read as follows:

**§ 575.503 Payments and transfers to blocked accounts in U.S. financial institutions.**

* * * * *

**Note to § 575.503:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 575.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 575.701 [Amended]**

7. Section 557.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

### Subpart H—Procedures

8. Section 575.801 is revised to read as follows:

**§ 575.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 575.802–575.804 and 575.806 [Removed]**

8a. Sections 575.802 through 575.804 and 575.806 are removed.

**§ 575.805 [Redesignated as § 575.802]**

8b. Section 575.805 is redesignated as § 575.802.

### Subpart I—Paperwork Reduction Act

9. Section 575.901 is revised to read as follows:

**§ 575.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 585—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) AND BOSNIAN SERB-CONTROLLED AREAS OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA SANCTIONS REGULATIONS

1. The authority citation for part 585 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 49 U.S.C. 40106; 50 U.S.C. 1601–1651, 1701–1706; Pub.L. 101–410, 104 Stat 890 (28 U.S.C. 2461 note); E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 501; E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 585.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 585.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart B—Prohibitions

3. Section 585.201 is amended by adding a new sentence to the end of the note to § 585.201(c) and by adding new paragraph (e) to read as follows:

**§ 585.201 Prohibited transactions involving blocked property; transactions with respect to securities.**

* * * * *

(c) * * *

**Note to § 585.201(c):** * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

* * * * *

(e) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

### Subpart C—General Definitions

4. The note at the end of § 585.311 is amended by adding a sentence to the end of the note to read as follows:

**§ 585.311 Government of the FRY (S&M).**

* * * * *

**Note to § 585.311:** * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Section 585.503 is amended by revising paragraph (a) and by adding a note to the end of the section to read as follows:

**§ 585.503 Payments and transfers to blocked accounts in U.S. financial institutions.**

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

* * * * *

**Note to § 585.503:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 585.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 585.701 [Amended]**

7. Section 585.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

### Subpart H—Procedures

8. Section 585.801 is revised to read as follows:

**§ 585.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 585.802–585.804 and 585.806 [Removed]**

8a. Sections 585.802 through 585.804 and 585.806 are removed.

**§ 585.805 [Redesignated as § 585.802]**

8b. Section 585.805 is redesignated as § 585.802.

### Subpart I—Paperwork Reduction Act

9. Section 585.901 is revised to read as follows:

**§ 585.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 590—UNITA (ANGOLA) SANCTIONS REGULATIONS

1. The authority citation for part 590 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p. 636.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 590.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 590.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

3. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 590.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 590.701 [Amended]**

4. Section 590.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by".

### Subpart H—Procedures

5. Section 590.801 is revised to read as follows:

**§ 590.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 590.802 through 590.804 and 590.806 [Removed]**

5a. Sections 590.802 through 590.804 and 590.806 are removed.

**§ 590.805 [Redesignated as § 590.802]**

5b. Section 590.805 is redesignated as § 590.802.

### Subpart I—Paperwork Reduction Act

6. Section 590.901 is added to read as follows:

**§ 590.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 595—TERRORISM SANCTIONS REGULATIONS

1. The authority citation for part 595 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319.

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 595.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 595.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

### Subpart B—Prohibitions

3. Section 595.201 is amended by designating the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

**§ 595.201 Prohibited transactions involving blocked property.**

* * * * *

(b) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

### Subpart C—General Definitions

4. The note at the end of § 595.311 is amended by adding a sentence to the end of the note to read as follows:

**§ 595.311 Specially designated terrorist.**

* * * * *

**Note to § 595.311:** * * * Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Section 595.503 is amended by revising paragraph (a) and by adding a note to the end of the section to read as follows:

**§ 595.503 Payments and transfers to blocked accounts in U.S. financial institutions.**

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

* * * * *

**Note to § 595.503:** Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

6. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 595.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart G—Penalties

**§ 595.701 [Amended]**

7. Section 595.701(a) introductory text is amended by removing the words "as amended by" and adding in their place the words "as adjusted by."

### Subpart H—Procedures

8. Section 595.801 is revised to read as follows:

**§ 595.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 595.802–595.804 and 595.806 [Removed]**

8a. Sections 595.802 through 595.804 and 595.806 are removed.

**§ 595.805 [Redesignated as § 595.802]**

8b. Section 595.805 is redesignated as § 595.802.

### Subpart I—Paperwork Reduction Act

9. Section 595.901 is revised to read as follows:

**§ 595.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of

information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

## PART 596—TERRORISM LIST GOVERNMENTS SANCTIONS REGULATIONS

1. The authority citation for part 596 is revised to read as follows:

**Authority:** 18 U.S.C. 2332d; 31 U.S.C. 321(b).

### Subpart A—Relation of This Part to Other Laws and Regulations

2. Section 596.101 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 596.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. * * *

* * * * *

3. Subpart F is revised to read as follows:

### Subpart F—Reports

**§ 596.601 Records and reports.**

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

### Subpart H—Procedures

4. Section 596.801 is revised to read as follows:

**§ 596.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

**§§ 596.802–596.804 and 596.806 [Removed]**

4a. Sections 596.802 through 596.804 and 596.806 are removed.

**§ 596.805 [Redesignated as § 596.802]**

4b. Section 596.805 is redesignated as § 596.802.

### Subpart I—Paperwork Reduction Act

5. Section 596.901 is revised to read as follows:

**§ 596.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: August 7, 1997.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: August 11, 1997.

**John P. Simpson,**

*Acting Assistant Secretary (Enforcement).*

**Note:** The following Form will not appear in the Code of Federal Regulations.

BILLING CODE 4810–25–P

## ANNUAL REPORT OF BLOCKED PROPERTY

TD F 90-22.50

Office of Foreign Assets Control
Department of the Treasury
Washington, D.C. 20220

The Office of Foreign Assets Control (OFAC) requires an annual report of all property blocked or funds retained under OFAC Regulations found in Title 31 of the Code of Federal Regulations, Parts 500 through 599. This information is needed by the United States Government for planning purposes and to verify compliance with OFAC Regulations. The report is to be submitted annually by September 30 to the Compliance Programs Division, OFAC, Department of the Treasury, Washington, D.C. 20220.

**General Instructions**

Any person holding property blocked or funds retained under OFAC Regulations is required to submit a report on this form concerning such property. Reports filed in accordance with OFAC Regulations are regarded as containing commercial and financial information which is privileged and confidential. Requests to submit reports in alternative formats will be considered on a case-by-case basis. For additional copies of the form, as well as other information of interest to holders of blocked property, call OFAC's fax-on-demand service at (202) 622-0077.

**Part A - U.S. Person Holding Property.**

State reporter's corporate name and address and the name and telephone number of an individual corporate official to contact regarding this report.

Name: _____

Address: _____

_____

Individual to contact regarding this report:

_____ _____ _____
(name) (title) (telephone number)

Total number of accounts or items reported on Part B: _____

Complete the certification where applicable. The report is not valid without the certification.

I, _____, certify that I am the _____
(name) (title)

of the _____, that I am authorized to make this
(corporate name)

certification, and that, to the best of my knowledge and belief, the statements set forth in this report, including any papers attached hereto or filed herewith, are true and accurate, and that all material facts in connection with said report have been set forth herein.

_____ _____
(signature) (date)

PAPERWORK REDUCTION ACT STATEMENT: The paperwork requirement has been cleared under the Paperwork Reduction Act of 1980. The Office of Foreign Assets Control of the Department of the Treasury requires this information be furnished pursuant to 50 U.S.C. 1701, and CFR Parts 500 to 600. The information collected will be used for U.S. Government planning purposes and to verify compliance with OFAC Regulations. The information will be held confidential. The estimated burden associated with this collection of information is 4 hours per respondent or record keeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220 and the Office of Management and Budget, paperwork Reduction Project (1505-0164), Washington, D.C. 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Part B - Property Reported**

Identify each account or item of property separately in the spaces provided below. Use additional photocopies of Part B as needed. Use supplemental attachments if the space provided is inadequate. Be sure to indicate the number of accounts or items reported on Part B in the appropriate space on Part A.

Owner. Identify the owner of the property.
Description. Provide a brief but comprehensive description of the property. Include account type, number, and currency (if other than U.S. Dollars) where applicable.
Value. Provide the value (or an estimate) of the property as of June 30. If a value date other than June 30 is reported, so indicate.
Location. List the location or branch where the property is held, if different than the address shown in Part A.
Regulations. Identify the Part of Title 31 of the Code of Federal Regulations under which this property is blocked.

| Owner | Description | Value | Location | Regulations |
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[FR Doc. 97-22378 Filed 8-22-97; 8:45 am]
BILLING CODE 4810-25-P

federal register

Monday
August 25, 1997

Part VI

# Environmental Protection Agency

40 CFR Part 60

Large Municipal Waste Combustion Units; Emission Guidelines; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD–FRL–5879–6]**

**RIN 2016–AD04**

## Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources: Large Municipal Waste Combustion Units

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

**ACTION:** Direct final rule.

**SUMMARY:** On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act, EPA promulgated emission guidelines applicable to existing municipal waste combustor (MWC) units and new source performance standards applicable to new MWC units. The guidelines and standards are codified at 40 CFR Part 60, subparts Cb and Eb, respectively. *See* 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with the capacity to combust less than or equal to 250 tons per day of municipal solid waste (MSW), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb apply only to MWC units with the capacity to combust more than 250 tons per day of MSW per unit (large MWC units).

This document amends the guidelines and the standards for MWC units to make them consistent with the *Davis* decision and subsequent court vacatur order. The guidelines and standards being amended have remained in effect for large MWC units since December 19, 1995 because the court did not vacate or stay the rules as they apply to these units.

The amended guidelines and standards result in the 1995 rule being applicable only to MWC units with the capacity to combust greater than 250 tons per day of MSW per unit. In this document, these units are referred to as large MWC units or large MWC's.

The amendments affect the applicability of the guidelines and standards, and add supplemental emission limits for four pollutants (hydrogen chloride, sulfur dioxide, nitrogen oxides, and lead) to the guidelines. The amendments do not add any additional emission limits to the standards.

The 1995 guidelines and standards applied to MWC units at plants greater than 35 megagrams per day combustion capacity (approximately 39 tons per day). Because the amendments restrict coverage of the 1995 guidelines and standards to only MWC units with combustion capacities greater than 250 tons per day consistent with the *Davis* decision, and because no petitions to review the 1995 rules as they applied to large MWC units were filed, the Agency does not anticipate receiving adverse comments on these amendments.

**DATES:** The amendments to the guidelines (subpart Cb) and standards (subpart Eb) are effective October 24, 1997 unless significant material adverse comments are received by September 24, 1997. If significant material adverse comments are received on the amendments to either the guidelines or the standards, the direct final rule receiving comment will be withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** A companion proposal to this direct final rule is being published in today's **Federal Register** and is identical to this direct final rule. Any comments on the amendments should address the proposal. If significant material adverse comments are received by the date specified in the proposed amendments, this direct final rule will be withdrawn and the comments on the proposed amendments will be addressed by EPA in a subsequent final rule. If no significant material adverse comments are received on any provision of this direct final rule, then no further action will be taken on the companion proposal and these amendments will become effective October 24, 1997.

Also being published in today's **Federal Register** are technical amendments to the guidelines and standards. The technical amendments are being published in a similar format to these court-related amendments, with a direct final rule and a companion proposal.

### I. Background

On December 20, 1989, under the authority of section 111(b) of the Clean Air Act of 1977, EPA proposed guidelines and standards for MWC units (40 CFR part 60, subparts Ca and Ea, respectively). The subpart Ca guidelines and subpart Ea standards were promulgated on February 11, 1991. The 1990 Amendments to the Clean Air Act included a new section 129 applicable to MWC units, which required EPA to review the subpart Ca guidelines and subpart Ea standards and determine if they were fully consistent with the requirements of the new section. The EPA reviewed the subpart Ca guidelines and subpart Ea standards and concluded that they were not fully consistent with the requirements of the new section 129. The EPA proposed revised guidelines (subpart Cb) and standards (subpart Eb) on September 20, 1994 to make the guidelines and standards consistent with the requirements of section 129. The revised guidelines and standards were adopted as final on December 19, 1995.

The 1995 rules subcategorized the MWC population into two categories of MWC units based on the total capacity of the MWC plants at which the MWC units were located. The large category included all MWC units located at MWC plants with aggregate plant combustion capacities greater than 250 tons per day (actually 225 megagrams per day, which is approximately 249 tons per day); the small category was comprised of all MWC units located at MWC plants with aggregate plant combustion capacities equal to or less than 250 tons per day but larger than 39 tons per day.

Following promulgation, two petitions for review were filed with the U.S. Court of Appeals for the District of Columbia Circuit regarding use of aggregate plant capacity as the basis for initial categorization in the 1995 promulgation. In addition, another petition was filed which challenged the applicability of the rules to cement kilns firing MSW. An initial opinion was issued by the District Court on December 6, 1996. *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996). The EPA filed a petition for rehearing on February 4, 1997, requesting that the court reconsider the remedy portion of its opinion and vacate the guidelines and standards only as they apply to small MWC units (those units with individual units capacity less than or equal to 250 tons per day) and all cement kilns. The court granted EPA's petition in full and issued a revised opinion on March 21, 1997. *Davis County Solid Waste Management and Recovery District* v. *EPA*, 108 F.3d 1454 (D.C. Cir. 1997). On April 8, 1997 the court issued an order implementing its opinion. The final opinion and order, to which this direct final rule responds, remanded to EPA the MWC guidelines and standards for the large category for amendment and vacated the guidelines

and standards as they applied to small units and all cement kilns. The 1995 guidelines have remained in effect since December 19, 1995 and will remain in effect for large MWC units during the amendment of the 1995 rules.

The remand required EPA to recalculate the maximum achievable control technology (MACT) floors for large MWC units consistent with the court's opinion. For existing sources, because the large category now includes only MWC units with combustion capacities greater than 250 tons per day, EPA must remove from the 1995 large category a total of 45 MWC units that have individual unit capacities of less than or equal to 250 tons per day, but that are co-located with other MWC units at MWC plants that have aggregate capacities greater than 250 tons per day. These 45 units are commonly referred to as the Davis class (referencing the name of the Court's opinion that clarifies that EPA must categorize these units as small MWC units). The removal of the Davis class units from the large MWC database used in 1995 to determine the MACT floors results in slightly modified emission guidelines for four pollutants; the other emission guideline limits are unaffected. For new sources, the change in applicability does not affect the calculation of the MACT floors or the resulting standards.

## II. Summary of Amendments

### *A. Change in Applicability*

As amended today, the guidelines and standards codified in subparts Cb and Eb, respectively, apply only to MWC units with combustion capacities greater than 250 tons per day per unit. This class of MWC units are referred to as the "large category" and the individual units are referred to as "large MWC units" or "large MWC's." This applicability requirement is different from the 1995 rule, which applied to all MWC units at plants with aggregate plant combustion capacities greater than 39 tons per day.

The amended guidelines and standards cover approximately 87 percent of the MWC capacity covered by the 1995 rule. Consistent with the *Davis* decision and court order, small MWC units (those with unit capacities less than or equal to 250 tons per day) are not covered by the amended rules and will be addressed in a separate rulemaking. Also consistent with the *Davis* decision and court order, the amended rules further exclude cement kilns firing MSW from coverage while EPA reassesses this issue. Should EPA conclude that a rulemaking under section 129 is appropriate for cement kilns combusting MSW, it will propose such regulations in a separate rulemaking.

Although the 1995 rules referred to "225 megagrams per day," which is equivalent to 248 tons per day, the rules as amended by this action refer only to 250 tons per day capacity with no metric conversion to be fully consistent with the language in the court's decision and sections 129(a)(1) (B) and (C) of the Clean Air Act.

These applicability changes amend §§ 60.32b, 60.50b, and 60.59b. Associated with these changes, references to large and small plants have been removed throughout subpart Cb to clarify the amended guidelines.

### *B. Emission Limits*

#### 1. Emission Guidelines (Subpart Cb)

As a result of the recalculation of the MACT floors, emission limits have been revised slightly from the 1995 promulgation. For a detailed discussion of the MACT floor analysis methodology, refer to the 1994 proposal preamble (59 FR 48228), the September 1995 report "Municipal Waste Combustion: Background Information Document for Promulgated Standards and Guidelines—Public Comments and Responses" (EPA–453/R–95–013b), and docket A–90–45.

In the 1995 promulgation, the MACT floors for each pollutant were based on the average emission limitation achieved by the best-performing 25 MWC units (12 percent of the 209 units in the 1995 large category). In the 1995 promulgated emission guidelines, EPA established MACT standards for eight pollutants (60 FR 65401 and 65402). As discussed in the preamble to the proposed and promulgated guidelines, the MACT standards for three pollutants—dioxins/furans, mercury, and cadmium—were more stringent than their respective MACT floors (59 FR 48246, and 60 FR 65401 and 65406), and the MACT standards for five pollutants—lead, particulate matter, sulfur dioxide, hydrogen chloride, and nitrogen oxides—were set at their respective MACT floors (59 FR 48246, and 60 FR 65401 and 65402).

Of the 209 MWC units in the 1995 promulgated large category, as noted previously, 45 are MWC units that are directly affected by the Court's decision (i.e., there currently are 45 MWC units with individual unit capacity less than or equal to 250 tons per day that are located at plants with aggregate capacities greater than 250 tons per day). The Court held that these 45 units must be placed in the small unit category and the large category must be reexamined based on this change. This results in the revised large category containing 164 MWC units (209 − 45=164). The MACT floors for each pollutant for the large category, therefore, must now be based on the average emission limitation achieved by the best-performing 20 MWC units in the large category (12 percent of 164), rather than the 25 units used in the 1995 guidelines.

The EPA calculated the revised MACT floors based on the best-performing 20 units and determined that the MACT floors for seven pollutants have become more stringent than the 1995 MACT floors. However, after comparing the MACT floors for the revised large category to the 1995 emission guideline levels for MWC units at large plants, it was determined that the MACT emission limits would need to change for only four pollutants. The MACT emission limits for the other pollutants do not change as a result of the change in the large category, either because the MACT floor does not change and the emission limit was set at the MACT floor (i.e., particulate matter), or because the 1995 emission limit is more stringent than either the 1995 MACT floor or the revised MACT floor (i.e., mercury, cadmium, dioxins/furans).

The revised MACT floors have led to slightly more stringent MACT limits for lead, sulfur dioxide, hydrogen chloride limits, and the fluidized bed combustor nitrogen oxides limit. These additional limits are being added to the guidelines as supplemental limits, and compliance with the supplemental limits can be no later than 5 years after publication or 3 years after EPA's approval of a State plan incorporating these supplemental limits, whichever is first. The original 1995 limits for these pollutants remain in the guidelines for large MWC units, and compliance with them remains December 19, 2000 or 3 years after EPA's approval of a State plan implementing these guidelines, whichever is first. The supplemental emission limits and their associated compliance dates are as follows:

AMENDED LIMITS FOR SUBPART CB (GUIDELINES)

| Pollutant | Compliance by 2000[a] | Compliance by 2002[b] |
|---|---|---|
| Lead (mg/dscm) | 0.49 | 0.44 |
| Sulfur Dioxide (ppmv) | 31 | 29 |
| Hydrogen Chloride (ppmv) | 31 | 29 |
| Nitrogen Oxides from Fluidized Bed Combustors (ppmv) | 240 | 180 |

[a] These limits and all other limits in the 1995 guidelines have remained in force since December 19, 1995, and compliance with them is required by December 19, 2000 or 3 years after approval of a State plan, whichever is first.

[b] These supplemental limits are being added to the guidelines and compliance with them is required by 5 years after promulgation of these amendments or 3 years after approval of a revised State plan incorporating these amendments, whichever is first.

In addition to the more stringent limits described above, the revised MACT floors for nitrogen oxides have led to a slightly less stringent limit for mass-burn waterwall combustors. EPA will approve State plans that include the less restrictive nitrogen oxide limit of 205 ppmv for mass burn waterwall combustors prior to the effective date of these amendments, consistent with the *Davis* decision. Also, the "other" combustor type subcategory for nitrogen oxides that was included in the 1995 guidelines was determined to be unnecessary because all known existing large MWC units fit into the first five subcategories (i.e., mass burn waterwall, mass burn rotary waterwall, refuse-derived fuel, fluidized bed, or mass burn refractory combustors).

The revised emission limits for all four pollutants can be achieved using the same types of air pollution control technology that served as the basis of the 1995 promulgated limits: spray dryer/electrostatic precipitator/carbon injection or spray dryer/fabric filter/carbon injection, and selective noncatalytic reduction for non-refractory combustor types.

2. Standards of Performance (Subpart Eb)

Since no Davis class units were used as the basis for the emission limits in the standards for the large category in the 1995 rules, there is no change to the MACT floor, the technology determined to be MACT, or the MACT emission limits that were established in the 1995 promulgation of the standards.

*C. Compliance Times and State Plan Revisions for Existing MWC units*

Under section 129(b)(2), emission guidelines are not directly enforceable; rather, States must develop section 111(d)/129 State plans that implement and enforce the guidelines. The State plans implementing the 1995 guidelines for large MWC units were due December 1996. State plans adding the supplemental limits discussed above are due within 1 year after promulgation of these amendments.

All large MWC units must be in compliance with the 1995 emission limits within 3 years of State plan approval or by December 19, 2000, whichever is first, and must be in compliance with the supplemental emission limits promulgated today no later than August 26, 2002 or 3 years after EPA approval of a State plan implementing these limits, whichever is first, consistent with sections 129(b) (2) and (3) of the Clean Air Act.

*D. Definitions*

The definition of MWC plant in § 60.51b of the 1995 standards referred to units that were "constructed, modified, or reconstructed after September 20, 1994" which contradicts the applicability dates for modified or reconstructed units specified in the applicability section. Under the applicability section, the date of September 20, 1994 is used to determine applicability of the standards to newly constructed units and the date of June 19, 1996 is used to determine applicability of the standards to modified/reconstructed units, consistent with sections 129 (f)(1), (g)(2), and (g)(3) of the Clean Air Act. To correct this, the amended MWC plant definition (§ 60.51b) now refers only to "affected facilities" and directs the reader to the applicability section (§ 60.50b) to determine what constitutes an affected facility. A similar change was made to § 60.31b of the guidelines. The definition of MWC unit in § 60.51b was amended to add language exempting all cement kilns firing MSW, consistent with the *Davis* decision.

*E. Other Changes*

The heading of subpart Cb was revised to include the date of September 20, 1994. This change was made to correct the subpart Cb heading listed in the introduction to part 60 which erroneously included the date of December 19, 1995. The heading of subpart Eb and the language of § 60.52b(c)(1) were amended to avoid confusion regarding the applicability to modified or reconstructed units.

## III. Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by these amendments only is available on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the Clean Air Act, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the Clean Air Act, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised during judicial review. Public comments on the notice proposing these amendments must be submitted to docket A–90–45/Section VIII–D (see **DATES, ADDRESSES,** and **SUPPLEMENTARY INFORMATION** of the proposal notice published elsewhere in today's **Federal Register** for more details). As discussed under the **SUPPLEMENTARY INFORMATION** section of this direct final rule and also as discussed in the proposal notice, if significant material adverse comments are received on the companion proposal, this direct final rule will be withdrawn and the comments received on the proposal will be addressed in a separate rulemaking.

## IV. Administrative Requirements

*A. Docket*

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review material. The docket number for this rulemaking is A–90–45. Docket No. A–89–08 also includes background information for this rulemaking and supported the proposal and

promulgation of the subpart Ca guidelines and subpart Ea standards. Docket No. A–89–08 has been incorporated by reference. Refer to the companion proposal in this **Federal Register** for docket address information.

*B. Paperwork Reduction Act*

Today's action does not impose any new information collection burden. Today's action reduces the coverage of the 1995 standards and the burden of the 1995 standards. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0210 (EPA ICR 1506.07). Copies of the ICR document(s) may be obtained from Sandy Farmer, OPPE, Regulatory Information Division; EPA; 401 M St., SW. (mail code 2137); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

*C. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1995 guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405). The amendments issued today do not result in any additional control requirements and this regulatory action is considered "not significant" under Executive Order 12866.

*D. Unfunded Mandates Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (see 60 FR 65405 to 65412).

The EPA has determined that these amendments do not include any new Federal mandates. Therefore, the requirements of the Unfunded Mandates Act do not apply to this direct final rule.

*E. Regulatory Flexibility Act*

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The rules as amended today do not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the guidelines and standards will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

*F. Submission to Congress and the Comptroller General*

Under 5 U.S.C. § 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, EPA submitted a report containing these amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of these rules in today's **Federal Register**. These amendments are not a "major rule" as defined by 5 U.S.C. 804(2) and a SBREFA analysis is not required.

**List of Subjects in 40 CFR Part 60**

Environmental Protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

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

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Revise the heading for subpart Cb to read as follows:

### Subpart Cb—Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994

3. In § 60.31b revise the definition of "Municipal waste combustor plant" to read as follows:

**§ 60.31b Definitions.**

* * * * *

*Municipal waste combustor plant* means one or more designated facilities (as defined in § 60.32b) at the same location.

* * * * *

4. Amend § 60.32b as follows:

a. In paragraph (b)(2) remove the words "10 megagrams" and add, in their place, the words "11 tons";

b. Revise paragraph (a) and the introductory text of paragraph (b), and add new paragraph (m) to read as follows:

**§ 60.32b Designated facilities.**

(a) The designated facility to which these guidelines apply is each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994.

(b) Any municipal waste combustion unit that is capable of combusting more than 250 tons per day of municipal solid waste and is subject to a federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than or equal to 11 tons per day is not subject to this subpart if the owner or operator:

* * * * *

(m) Cement kilns firing municipal solid waste are not subject to this subpart.

5. Amend § 60.33b as follows:

a. In paragraphs (a)(1)(i), (a)(2)(i), (a)(2)(iii), (b)(1)(i), (b)(2)(i), and (c)(1) introductory text remove the phrase "located within a large municipal waste combustor plant";

b. In paragraphs (a)(1)(iii) and (a)(3) remove the phrase "located within a small or large municipal waste combustor plant";

c. Remove and reserve paragraphs (a)(1)(ii), (a)(2)(ii), (a)(2)(iv), (b)(1)(ii), (b)(2)(ii), and (c)(2);

d. In paragraph (d) introductory text remove the phrase "located within large municipal waste combustor plants";

e. In table 1, referenced in paragraph (d) introductory text, remove the phrase "AT LARGE MUNICIPAL WASTE COMBUSTOR PLANTS" from the title; remove the mass burn waterwall nitrogen oxides emission limit of "200" and add, in its place, the emission limit of "205"; remove the last line of the table "Other[b] 200"; and remove the footnote "[b] Excludes mass burn refractory municipal waste combustors.";

f. In paragraph (d)(1)(i) remove the phrase "An owner or operator of a large

municipal" and add, in its place, the phrase "The owner or operator of a municipal";

g. In table 2, referenced in paragraph (d)(1)(iii), remove the title "NITROGEN OXIDES LIMITS FOR EXISTING DESIGNATED FACILITIES INCLUDED IN AN EMISSIONS AVERAGING PLAN AT LARGE MUNICIPAL WASTE COMBUSTOR PLANTS" and add, in its place, the title "NITROGEN OXIDES LIMITS FOR EXISTING DESIGNATED FACILITIES INCLUDED IN AN EMISSIONS AVERAGING PLAN AT A MUNICIPAL WASTE COMBUSTOR PLANT[a]"; remove the mass burn waterwall nitrogen oxides emission limit of "180" and add, in its place, the emission limit of "185"; remove the superscript "a" from the end of the heading of the second column and add, in its place, the superscript "b"; remove the line "Other[b] 180" from the table; remove footnote b; redesignate footnote "a" as "b"; and add the footnote "a mass burn refractory municipal waste combustors and other MWC technologies not listed above may not be included in an emissions averaging plan."; and

h. Revise paragraph (d)(1)(i)(B), and add paragraphs (a)(4), (b)(3), and (d)(3) to read as follows:

**§ 60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.**

(a) * * *

(4) For approval, a State plan shall be submitted by August 25, 1998 and shall include an emission limit for lead at least as protective as the emission limit for lead specified in this paragraph. The emission limit for lead contained in the gases discharged to the atmosphere from a designated facility is 0.44 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(b) * * *

(3) For approval, a State plan shall be submitted by August 25, 1998 and shall include emission limits for sulfur dioxide and hydrogen chloride at least as protective as the emission limits specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The emission limit for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility is 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(ii) The emission limit for hydrogen chloride contained in the gases discharged to the atmosphere from a designated facility is 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) Mass burn refractory municipal waste combustor units and other municipal waste combustor technologies not listed in paragraph (d)(1)(iii) of this section may not be included in the emissions averaging plan.

* * * * *

(3) For approval, a State plan shall be submitted by August 25, 1998 and shall include emission limits for nitrogen oxides from fluidized bed combustors at least as protective as the emission limits listed in paragraphs (d)(3)(i) and (d)(3)(ii) of this section.

(i) The emission limit for nitrogen oxides contained in the gases discharged to the atmosphere from a designated facility that is a fluidized bed combustor is 180 parts per million by volume, corrected to 7 percent oxygen.

(ii) If a State plan allows nitrogen oxides emissions averaging as specified in paragraphs (d)(1)(i) through (d)(1)(v) of this section, the emission limit for nitrogen oxides contained in the gases discharged to the atmosphere from a designated facility that is a fluidized bed combustor is 165 parts per million by volume, corrected to 7 percent oxygen.

**§ 60.34b [Amended]**

6. In § 60.34b(a) remove the phrase "located within a small or large municipal waste combustor plant".

**§ 60.35b [Amended]**

7. In § 60.35b remove the phrase "located within small or large municipal waste combustor plants".

**§ 60.38b [Amended]**

8. In § 60.38b remove the phrase "at large municipal waste combustor plants" from paragraph (b), and remove and reserve paragraph (c).

9. Amend § 60.39b as follows:

a. In paragraphs (c)(1) introductory text and (c)(4)(ii) remove the phrase "located within large municipal waste combustor plants";

b. In paragraph (c)(2) remove the phrase "located within a large municipal waste combustor plant";

c. Remove and reserve paragraphs (c)(3) and (c)(4)(i);

d. In paragraph (c)(4)(iii) introductory text remove the phrase "located within small or large municipal waste combustor plants";

e. In paragraph (c)(5) remove the phrase "that are located within a large municipal waste combustor plant"; and

f. Revise the first sentence of paragraph (b), revise paragraph (d), and add paragraphs (e) and (f) to read as follows:

**§ 60.39b Reporting and recordkeeping guidelines and compliance schedules.**

* * * * *

(b) Not later than December 19, 1996, each State in which a designated facility is located shall submit to the EPA Administrator a plan to implement and enforce all provisions of this subpart except those specified under § 60.33b (a)(4), (b)(3), and (d)(3). * * *

* * * * *

(d) In the event no plan for implementing the emission guidelines is approved by EPA, all designated facilities meeting the applicability requirements under § 60.32b shall be in compliance with all of the guidelines, except those specified under § 60.33b (a)(4), (b)(3), and (d)(3), no later than December 19, 2000.

(e) Not later than August 25, 1998, each State in which a designated facility is operating shall submit to the EPA Administrator a plan to implement and enforce all provisions of this subpart specified in § 60.33b (a)(4), (b)(3), and (d)(3).

(f) In the event no plan for implementing the emission guidelines is approved by EPA, all designated facilities meeting the applicability requirements under § 60.32b shall be in compliance with all of the guidelines, including those specified under § 60.33b (a)(4), (b)(3), and (d)(3), no later than August 26, 2002.

10. Revise the heading for subpart Eb to read as follows:

**Subpart Eb—Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996**

11. Amend § 60.50b as follows:

a. In paragraph (b)(2) remove the words "10 megagrams" and add, in their place, the words "11 tons";

b. Revise paragraphs (a) and (b) introductory text, and add paragraph (p) to read as follows:

**§ 60.50b Applicability and delegation of authority.**

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996.

(b) Any waste combustion unit that is capable of combusting more than 250 tons per day of municipal solid waste and is subject to a federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than or equal to 11 tons per day is not subject to this subpart if the owner or operator:

* * * * *

(p) Cement kilns firing municipal solid waste are not subject to this subpart.

12. Amend § 60.51b to revise paragraph (1) of the "Municipal waste combustor, MWC, or municipal waste combustor unit" definition and to revise the "Municipal waste combustor plant" definition to read as follows:

**§ 60.51b Definitions.**

* * * * *

*Municipal waste combustor, MWC, or municipal waste combustor unit:* (1) Means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at a plastics/rubber recycling unit (as specified in § 60.50b(m)). Municipal waste combustors do not include cement kilns firing municipal solid waste (as specified in § 60.50b(p)). Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

* * * * *

*Municipal waste combustor plant* means one or more affected facilities (as defined in § 60.50b) at the same location.

* * * * *

13. In § 60.52b(c)(1) revise the first sentence to read as follows:

**§ 60.52b Standards for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.**

* * * * *

(c) * * *

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility for which construction, modification or reconstruction commences on or before November 20, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan emissions that exceed 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for the first 3 years following the date of initial startup. * * *

* * * * *

**§ 60.59b [Amended]**

14. In § 60.59b paragraphs (a) introductory text and (b) introductory text remove the phrase "located at a municipal waste combustor plant", and remove the words "35 megagrams" and add, in their place, the words "250 tons".

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August 25, 1997

Part VII

# Environmental Protection Agency

40 CFR Part 60

Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources: Large Municipal Waste Combustion Units; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD–FRL–5879–4]**

**RIN 2016–AD04**

## Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources: Large Municipal Waste Combustion Units

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

**ACTION:** Direct final rule.

**SUMMARY:** This action amends the emission guidelines (subpart Cb) and the standards of performance (subpart Eb) for municipal waste combustion (MWC) units. These amendments are companion amendments to the court-ordered remand amendments published elsewhere in this **Federal Register**. These amendments are being made to improve the clarity of subparts Cb and Eb, and to make technical corrections that have been brought to EPA's attention since the December 19, 1995 promulgation.

**DATES:** These amendments to the guidelines (subpart Cb) and standards (subpart Eb) are effective October 24, 1997 unless significant material adverse comments are received by September 24, 1997. If significant material adverse comments are received on the amendments to either the guidelines or the standards, the direct final rule receiving comment will be withdrawn. In addition, the effective date for amendments for §§ 60.17, 60.23, 60.24, 60.30, and subpart Ca in a final rule published on December 19, 1995 at 60 FR 65387 is established as December 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** A companion proposal to this direct final rule is being published in today's **Federal Register** and is identical to this direct final rule. Any comments on the amendments should address that proposal. If significant material adverse comments are received on the proposed amendments by the date specified in the proposed amendments, this direct final rule will be withdrawn and the comments on the proposed amendments will be addressed by EPA in a subsequent final rule. If no significant material adverse comments are received on any provision of the companion proposal, then no further action will be taken on the proposal and these amendments will become effective October 24, 1997.

Also being published in today's **Federal Register** are a separate direct final rule and proposal amending the guidelines and standards in response to specific court-mandated changes, consistent with the decision of the U.S. Court of Appeals in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997), and the court's vacatur order issued on April 8, 1997. Refer to the separate court-related direct final rule for more background information regarding the history of these subparts and the court opinion.

The amendments contained herein provide additional clarification to the language of the subparts beyond the clarifications included in the separate court-related amendments. In addition, these amendments include corrections to cross-references and typographical errors in the December 19, 1995 promulgation, and make technical corrections that have been brought to EPA's attention since 1995.

### I. Summary of Amendments

The amendments in this direct final rule are primarily to improve the readability of the guidelines and standards reflecting revisions related to the court's opinion. These modifications include overall changes to the language used, changes to the definition section, the inclusion of Method 3A in the performance testing options, the addition of a refuse-derived fuel heating value, clarifitation of the fugitive ash annual testing requirements, and other miscellaneous amendments.

*A. Clarification of Language*

To reflect the change in applicability from a plant basis to unit basis as a result of the *Davis* decision and subsequent vacatur order, references to small and large plants are removed throughout the rules. In some cases, this change entails removing and reserving entire paragraphs if the entire paragraph addressed small plants.

The lower size cut-off has been revised from 35 megagrams per day plant capacity to 250 tons per day unit capacity. In addition, all capacity designations have been changed to "tons per day" instead of "megagrams per day" to be consistent with the 250 tons per day lower size cut-off specified by the court for large MWC units.

*B. Definitions*

Several definitions are no longer needed and have been removed, including the definitions of municipal waste combustor plant capacity, large municipal waste combustor plant, and small municipal waste combustor plant. These changes are included in § 60.51b.

*C. Performance Test Methods*

It was intended that EPA Test Methods 3, 3A, or 3B, as applicable, be specified for use in measuring diluent gas during performance testing or with continuous monitoring systems. The 1995 rule only listed Method 3 for some pollutants and listed Methods 3A or 3B for other pollutants. This change is included in § 60.58b.

*D. Refuse-Derived Fuel Heating Value*

To correct an oversight in the 1995 rules, a separate heating value for combustors firing refuse-derived fuel (RDF) has been added to take into consideration the greater specific heat of RDF. The heating value promulgated in 1995 remains the same for non-RDF.

*E. Fugitive Ash Annual Test Requirements*

To clarify that fugitive emissions from ash handling must be tested on an annual basis, a new paragraph has been added to § 60.58b, and cross references have been corrected, consistent with EPA's intent that testing be done annually (see 60 FR 65394 and 65400).

*F. Miscellaneous Changes*

The remaining changes have been made to correct typographical errors, to clarify, and to improve readability.

### II. Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by these amendments only is available on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the Clean Air Act, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the Clean Air Act, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised during judicial review. Public comments on the notice proposing these amendments must be submitted to docket A–90–45/Section VIII–E (see **DATES, ADDRESSES,** and **SUPPLEMENTARY INFORMATION** of

the proposal notice published elsewhere in today's **Federal Register** for more details). As discussed under the SUPPLEMENTARY INFORMATION section of this direct final promulgation notice and the proposal notice, if significant material adverse comments are received on the companion proposal, this direct final rule will be withdrawn and the comments received on the proposal will be addressed in a separate rulemaking.

## III. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review material. The docket number for this rulemaking is A–90–45. Docket No. A–89–08 also includes background information for this rulemaking and supported the proposal and promulgation of the subpart Ca guidelines and subpart Ea standards. Docket No. A–89–08 has been incorporated by reference. Refer to the companion proposal in this **Federal Register** for docket address information.

### *B. Paperwork Reduction Act*

Today's action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0210 (EPA ICR 1506.07). Copies of the ICR document(s) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; EPA; 401 M St., SW. (mail code 2137); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

### *C. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1995 guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (see 60 FR 65405). The amendments issued today do not result in any additional control requirements and this regulatory action is considered "not significant" under Executive Order 12866.

### *D. Unfunded Mandates Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the 1995 promulgation notice (see 60 FR 65405 to 65412).

The EPA has determined that these amendments do not include any new Federal mandates. Therefore, the requirements of the Unfunded Mandates Act do not apply to this direct final rule.

### *E. Regulatory Flexibility Act*

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The rules as amended today would not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the guidelines and standards will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

### *F. Submission to Congress and the Comptroller General*

Under 5 U.S.C. § 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, EPA submitted a report containing these amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of these rules in today's **Federal Register**. These amendments are not a "major rule" as defined by 5 U.S.C. 804(2) and a SBREFA analysis is not required.

## IV. Other Information

In addition to the amendment of subparts Cb and Eb, this **Federal Register** document addresses an omission in the 1995 promulgation notice. On December 19, 1995 at 60 FR 65387 EPA published a final rule which inadvertently left out an effective date for amendments 2., 3., 4., 5., and 5a. for sections 60.17, 60.23, 60.24, 60.30, and subpart Ca. Consistent with EPA's intent that those amendments be effective immediately (see 60 FR 65387, 65390, and 65414), the effective date was December 19, 1995.

### List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

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

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

**§ 60.31 [Amended]**

2. Amend § 60.31b to remove the definition for "Municipal waste combustor plant capacity".

**§ 60.32 [Amended]**

3. In § 60.32b paragraphs (b)(1), (d), (e), (f)(1), and (i)(1) remove the word "Administrator" and add, in its place, the words "EPA Administrator".

**§ 60.33 [Amended]**

4. In § 60.33b(a)(3) remove the phrase "(an 85-percent reduction by weight)" and add in its place the phrase "(85-percent reduction by weight)";

**§ 60.34 [Amended]**

5. In § 60.34b amend table 3, referenced in paragraph (a), to add the superscript "[b]" to the end of the heading of the third column, and add the footnote "[b] Averaging times are 4-hour or 24-hour block averages.".

**§ 60.39 [Amended]**

6. In § 60.39b(c)(4)(iii)(B) remove the phrase "The owner or operator may request that the Administrator" and add, in its place, the phrase "The owner or operator of a designated facility may request that the EPA Administrator".

**§ 60.50 [Amended]**

7. Amend § 60.50b as follows:

a. In paragraphs (b)(1), (e), (f), (g)(1), and (j)(1) remove the word

"Administrator" and add, in its place, the words "EPA Administrator"; and

b. In paragraph (j) introductory text remove the phrase "located at a plant".

**§ 60.51 [Amended]**

8. Amend § 60.51b as follows:

a. Remove the definitions of "Large municipal waste combustor plant", "Municipal waste combustor plant capacity", and "Small municipal waste combustor plant";

b. In the definition of "Municipal waste combustor unit capacity" remove the word "megagrams" and add, in its place, the word "tons"; and

c. Correct the definition title *Refuse-derived/fuel* to read *Refuse-derived fuel.*

**§ 60.52 [Amended]**

9. Amend § 60.52b as follows:

a. In paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), and (c)(2) remove the phrase "located within a small or large municipal waste combustor plant"; and

b. In paragraphs (d)(1) and (d)(2) remove the phrase "located within a large municipal waste combustor plant".

**§ 60.53 [Amended]**

10. Amend § 60.53b as follows:

a. In paragraphs (a) introductory text, (b) introductory text, and (c) introductory text remove the phrase "located within a small or large municipal waste combustor plant"; and

b. In table 1, referenced in paragraph (a) introductory text, add the superscript "[b]" to the end of the heading of the third column, and add the footnote "[b] Averaging times are 4-hour or 24-hour block averages.".

**§ 60.54 [Amended]**

11. Amend § 60.54b as follows:

a. In paragraphs (a), (b), (c) introductory text, (d), (e) introductory text, and (f) introductory text remove the phrase "located within a small or large municipal waste combustor plant"; and

b. Redesignate paragraphs (c)(i) and (c)(ii) as (c)(1) and (c)(2), respectively.

**§ 60.55 [Amended]**

12. In § 60.55b(a) remove the phrase "located within a small or large municipal waste combustor plant".

**§ 60.56 [Amended]**

13. In § 60.56b remove the phrase "located at a plant with a plant capacity to combust greater than 35 megagrams" and add, in its place, the phrase "with the capacity to combust greater than 250 tons".

**§ 60.57 [Amended]**

14. In § 60.57b (a) introductory text, (b) introductory text, and (c) remove the phrase "located within a small or large municipal waste combustor plant,".

**§ 60.58 [Amended]**

15. Amend § 60.58b as follows:

a. In paragraph (b) introductory text remove the phrase "operator of a small or large municipal waste combustor plant shall" and add, in its place, the phrase "operator of an affected facility shall";

b. In paragraph (b)(3) remove the phrase "startup of the municipal waste combustor" and add, in its place, the phrase "startup of the affected facility";

c. In paragraph (b)(6)(i) remove the words "The emission rate correction factor and the integrated bag sampling and analysis procedure of EPA Reference Method 3B shall" and add, in their place, the words "The fuel factor equation in Method 3B shall be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3, 3A, or 3B, as applicable, shall";

d. In paragraphs (c)(2), (d)(1)(ii), (d)(2)(ii), and (g)(2) remove the words "Method 3" and add, in their place, the words "Method 3, 3A, or 3B, as applicable,";

e. In paragraphs (c)(4), (d)(1)(v), (d)(2)(vii), (e)(3), (f)(4), (g)(8), (h)(2), (i)(5) remove the phrase "An owner or operator may request" and add, in its place, the phrase "The owner or operator of an affected facility may request";

f. In paragraphs (c)(7), (c)(11), and (d)(2)(viii) remove the phrase "located within a small or large municipal waste combustor plant";

g. In paragraphs (c)(9), (d)(1)(vii), (d)(2)(ix), (f)(7), (h)(3), and (h)(4) remove the phrase "located within a large municipal waste combustor plant";

h. Remove and reserve paragraphs (c)(10), (d)(1)(viii), (d)(1)(ix), (d)(2)(x), (f)(8), and (g)(5)(ii);

i. In paragraphs (e)(12)(i)(B), (h)(10)(i)(B), and (i)(3)(ii)(B) remove the words "Method 3A or 3B" and add, in their place, the words "Method 3, 3A, or 3B, as applicable";

j. In paragraphs (g)(5) introductory text and (g)(5)(i) remove the phrase "located within small and large municipal waste combustor plants";

k. In paragraphs (h)(10) introductory text and (m)(3) introductory text remove the phrase "The owner or operator shall" and add, in its place, the phrase "The owner or operator of an affected facility shall";

l. In paragraphs (j)(1) introductory text and (j)(2) remove the phrase ", in megagrams per day of municipal solid waste combusted," and in paragraph (j)(2) remove the phrase "in megagrams per day of municipal solid waste";

m. In paragraph (j)(1)(i) remove the words "10,500 kilojoules per kilogram" and add, in their place, the words "12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel";

n. In paragraph (j)(2) remove the words "10,500 kilojoules per kilogram for all municipal solid waste" and add, in their place, the words "12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel"; and

o. Revise paragraph (b)(7), the first sentence of paragraph (g)(5)(iii), paragraph (h) introductory text, paragraph (k) introductory text, and add paragraph (k)(4) to read as follows:

**§ 60.58b Compliance and performance testing.**

* * * * *

(b) * * *

(7) The relationship between carbon dioxide and oxygen concentrations that is established in accordance with paragraph (b)(6) of this section shall be submitted to the EPA Administrator as part of the initial performance test report and, if applicable, as part of the annual test report if the relationship is reestablished during the annual performance test.

* * * * *

(g) * * *

(5) * * *

(iii) Where all performance tests over a 2-year period indicate that dioxin/furan emissions are less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant.

* * *

* * * * *

(h) The procedures and test methods specified in paragraphs (h)(1) through (h)(12) of this section shall be used to determine compliance with the nitrogen oxides emission limit for affected facilities under § 60.52b(d).

* * * * *

(k) The procedures specified in paragraphs (k)(1) through (k)(4) of this

section shall be used for determining compliance with the fugitive ash emission limit under § 60.55b.

* * * * *

(4) Following the date that the initial performance test for fugitive ash emissions is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility, the owner or operator shall conduct a performance test for fugitive ash emissions on an annual basis (no more than 12 calendar months following the previous performance test).

* * * * *

**§ 60.59 [Amended]**

16. Amend § 60.59b as follows:

a. In paragraph (b)(4) remove the phrase ", municipal waste combustion plant capacity,";

b. In paragraph (d) introductory text remove the phrase "located within a small or large municipal waste combustor plant and";

c. In paragraphs (d)(2)(i)(C), (d)(2)(ii)(B), and (d)(6)(ii) remove the phrase "(large municipal waste combustor plants only)";

d. In paragraph (d)(3) remove the phrase "(d)(2)(ii)(A) through (d)(2)(ii)(E)" and add, in its place the phrase "(d)(2)(ii)(A) through (d)(2)(ii)(D)";

e. In paragraph (d)(8) remove the phrase "(large municipal waste combustors only)";

f. In paragraph (d)(11) remove "municipal waste combustor" and add, in its place, "affected facility";

g. In paragraph (d)(12)(ii) remove the phrase "as required by § 60.54b(a)" and add, in its place, the phrase "as required by § 60.54b(b)";

h. In paragraphs (f) introductory text, (g) introductory text, and (h) introductory text remove the phrase "located within a small or large municipal waste combustor plant";

i. In paragraph (l) remove the phrase "If an owner or operator would prefer to select" and add, in its place, "If the owner or operator of an affected facility would prefer";

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federal register

Monday
August 25, 1997

Part VIII

# Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 68**

**[FRL–5881–8]**

## List of Regulated Substances and Thresholds for Accidental Release Prevention

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to modify the list of regulated substances and threshold quantities authorized by section 112(r) of the Clean Air Act as amended. EPA is vacating the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. The current listing and threshold for all other regulated substances, including hydrochloric acid solutions with 37% or greater concentrations and the listing and threshold for anhydrous hydrogen chloride, are unaffected by today's rulemaking. Today's action implements, in part, a settlement agreement between EPA and the General Electric Company (GE) to resolve GE's petition for review of the rulemaking listing regulated substances and establishing thresholds under the accidental release prevention regulations.

**DATES:** This rule is effective August 25, 1997.

**ADDRESSES:** Docket: The docket for this rulemaking is A–97–28. This rule amends a final rule, the docket for which is A–91–74. The docket may be inspected between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, Waterside Mall, 401 M St., SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, MC 5104, 401 M St., SW, Washington, DC 20460, (202) 260–7249.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

Entities potentially affected by this action include the following types of facilities if the facility has more than the 15,000-pound threshold quantity of hydrochloric acid solutions with concentrations of less than 37% hydrogen chloride.

| Category | Example of regulated entities |
|---|---|
| Chemical manufacturers. | Industrial inorganics. |
| Petrochemical | Plastics and resins. |
| Other manufacturers. | Pulp and paper mills, primary metal production, fabricated metal products, electronic and other electric equipment, transportation equipment, industrial machinery and equipment, food processors. |
| Wholesalers .. | Chemical distributors. |
| Federal sources. | Defense and energy installations. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could be affected. To determine whether your facility is affected by this action, you should carefully examine today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **For Further Information Contact** section.

The following outline is provided to aid in reading this preamble to the rule:

**Table of Contents**



## I. Introduction and Background

### *A. Statutory Authority*

This final rule is being issued under sections 112(r) and 301 of the Clean Air Act (Act) as amended.

### *B. Regulatory History*

The Clean Air Act (CAA or Act), section 112(r), requires EPA to promulgate an initial list of at least 100 substances ("regulated substances") that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. The CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations promulgated under CAA section 112(r)(7), including the requirement to develop risk management plans.

On January 31, 1994, EPA promulgated the list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations (59 FR 4478) (the "List Rule"). This list included hydrochloric acid solutions with concentrations of 30% or greater. Such solutions were assigned a threshold quantity of 15,000 pounds. EPA subsequently promulgated a rule requiring owners and operators of stationary sources with listed substances above their threshold quantities to develop programs addressing accidental releases and to make publicly available risk management plans ("RMPs") summarizing these programs. (61 FR 31668, June 20, 1996) (the "RMP Rule"). For further information on these regulations, section 112(r), and related statutory provisions, see these notices. These rules can be found in 40 CFR part 68, "Chemical Accident Prevention Provisions," and collectively are referred to as the accidental release prevention regulations.

### *C. List Rule Litigation*

The General Electric Company (GE) filed a petition for judicial review of the List Rule regarding EPA's listing criteria under the List Rule, the listing of certain substances in the List Rule, the setting of threshold quantities for certain substances in particular and all regulated toxic substances generally, and the petition process for adding and deleting regulated substances to the list. Recognizing that the public's interest would best be served by settlement of all issues raised in this litigation, GE and EPA agreed to a settlement on April 7, 1997. Under the terms of the settlement agreement, on May 22, 1997 (62 FR 27992), EPA proposed to vacate the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. EPA is today taking final action on this proposal.

## II. Discussion of the Final Rule and Public Comments

Today's final rule adopts without modification the May 22, 1997 (62 FR 27992), proposal to vacate provisions of the accidental release prevention regulations that specifically address hydrochloric acid solutions with less than 37% hydrogen chloride. The basis

and purpose of this rulemaking is set out in the above referenced proposal. As discussed in the proposal, this action addresses the essential element of the dispute between EPA and GE while eliminating the collateral uncertainty that would exist about the regulatory status of the remaining chemicals if the litigation proceeded. EPA has vigorously advocated responsible accident prevention efforts by industry even before enactment of section 112(r). The Agency is concerned that prolonging this dispute may encourage owners and operators of sources who are solely concerned about regulatory compliance to defer engaging in responsible accident prevention activities. By implementing the settlement agreement with GE and by implementing the settlement agreements reached in the other two challenges to the List Rule, EPA will be able to retain on the list of regulated substances nearly all of the chemicals originally listed and eliminate uncertainty about their regulatory status. As also discussed in the proposal, the general duty clause of section 112(r)(1) and the retention on the list of solutions with concentrations of 37% or greater ensures that today's rule is protective of public health in several respects.

EPA received 11 letters commenting on the proposed rule. All of the comments were from industry and trade associations. All commenters supported vacating the listing of hydrochloric acid in concentration below 37%. Several of them specifically supported EPA's stated position that this proposal is protective of public health in several respects and that this action will eliminate uncertainty in the regulated community regarding RMP compliance for hydrochloric acid solutions.

Several commenters brought up technical issues regarding the basis for listing hydrochloric acid in aqueous solution. EPA stated in the proposed rule that it was not reopening the rulemaking record on the listing of hydrochloric acid within the range of 30% to 37%. Any technical issues related to the listing of hydrochloric acid solutions will be addressed if EPA undertakes future regulatory actions regarding such solutions. In agreeing to the settlement with GE and in this related rulemaking, EPA has not conceded or acknowledged any technical deficiencies in its original listing of HCl solutions with less than 37% concentration.

One commenter said that solutions at 37%, as well as those below 37%, should be delisted. EPA considers this issue outside the scope of the current rulemaking. The listing of solutions at 37% and above was decided in the original List Rule and was not reopened by this rulemaking; objections to the listing of 37% solutions should have been made by seeking review of the original List Rule and are now untimely. To the extent that the commenter wishes to reopen the technical merits of listing solutions that are precisely 37% HCl, EPA would address that issue along with other technical issues if EPA were to take further action on hydrochloric acid solutions.

Two commenters referred to comments submitted on the original proposal to list hydrochloric acid solution. EPA addressed comments on the proposed List Rule when it promulgated the final rule (January 31, 1994).

Several commenters questioned the accident history of hydrochloric acid solutions and stated that EPA's accident database does not support listing hydrochloric acid solutions. To the extent to which it is relevant, EPA will consider the up-to-date accident history if it takes any further regulatory actions on the listing of hydrochloric acid solutions.

One commenter stated that EPA overestimated the number of regulated sources that would not have to comply with the List rule as a result of this vacatur. EPA's estimate of 800 sources was based on preliminary, conservative assumptions that EPA used to determine that a regulatory impact analysis was not required and was not related to the basis for the proposal. The number and type of sources that are affected by a listing are irrelevant under sections 112(r)(3) and (4). The Agency recognizes that this estimate may represent a conservative picture of the effect of the rule on the regulated community.

One commenter stated his understanding that hydrochloric acid solutions of 36.94% would not be covered by the RMP rule. EPA confirms that all solutions that can be accurately measured at less than 37% are excluded.

EPA also proposed on May 22, 1997, to extend the RMP rule compliance deadline for hydrochloric acid solutions with concentrations of 30% to 37% if EPA did not take final action to vacate the hydrochloric acid listing as proposed. Because EPA is vacating the listing of such solutions by the final action today, no action is necessary on this alternative proposal. If EPA were to relist these solutions in the future, then sources would have three years from the new listing to comply with the RMP rule.

Finally, as stated in the proposal, EPA wishes to clarify that this rule will not affect in any way the listing of anhydrous hydrogen chloride. Anhydrous hydrogen chloride will retain its 5000-pound threshold. Threshold determination provisions for regulated toxic substances would apply to anhydrous hydrogen chloride. Anhydrous mixtures of hydrogen chloride would be subject to the mixture provisions for regulated toxic substances. Aqueous mixtures of hydrochloric acid would be affected to the extent that the minimum concentration cutoff would be revised.

Based on the reasons discussed above, EPA is vacating the listing in part 68 of hydrochloric acid solutions at concentrations of less than 37% (from 30% up to 37%) hydrogen chloride. Solutions of 37% or greater will not be affected by today's rule and remain on the list. In addition, EPA is vacating other provisions of the accidental release prevention regulations insofar as they apply to hydrochloric acid solutions at concentrations less than 37% hydrogen chloride. For example, the reference to "hydrochloric acid (conc 30% or greater)" in the toxic endpoint table for 40 CFR part 68 will be revised to refer to concentrations of 37% or greater.

## III. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

## IV. Required Analyses

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

*B. Regulatory Flexibility*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will not have a significant negative impact on a substantial number of small entities because it will reduce the range of hydrochloric acid solutions listed under part 68 and thus reduce the number of stationary sources subject to part 68.

*C. Paperwork Reduction*

This rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule will reduce the number of sources subject to part 68. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 68**

Environmental protection, Chemicals, Chemical accident prevention, Extremely hazardous substances, Incorporation by reference, Intergovernmental relations, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 19, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended as follows:

## PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

**Authority:** 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

**§ 68.130 Tables 1 and 2 [Amended]**

2. In § 68.130 List of substances, Table 1 is amended by revising the listing in the column "Chemical name" from "Hydrochloric acid (conc 30% or greater)" to "Hydrochloric acid (conc 37% or greater)."

3. In § 68.130 List of substances, Table 2 is amended by revising the listing in the column "Chemical name" from "Hydrochloric acid (conc 30% or greater)" to "Hydrochloric acid (conc 37% or greater)," and by adding a note "d" between note "c" and "e" at the end of the table to read as follows:

"d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents."

**Appendix A of Part 68 [Amended]**

4. Appendix A of Part 68 is amended by revising the listing in the column "Chemical name" from "Hydrochloric acid (conc 30% or greater)" to "Hydrochloric acid (conc 37% or greater)."

[FR Doc. 97–22511 Filed 8–22–97; 8:45 am]
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federal register

Monday
August 25, 1997

Part IX

# Environmental Protection Agency

40 CFR Part 68
Accidental Release Prevention Requirements; Interpretations; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 68**

**[FRL–5881–9]**

## Accidental Release Prevention Requirements; Interpretations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Interpretations.

**SUMMARY:** The Environmental Protection Agency is announcing clarifying interpretations of the accident prevention regulations authorized by section 112(r) of the Clean Air Act (CAA). First, the Agency is clarifying the method for calculating whether a quantity of a regulated substance in a listed solution exceeds its regulatory threshold under these rules. Second, the Agency is clarifying that certain reports and studies required by the accident prevention rules do not need to be reported under section 8(e) of the Toxic Substances Control Act (TSCA) or under the rules implementing TSCA section 8(d). The interpretations announced today clarify the Agency's existing policy and should help regulated entities understand their compliance obligations under these regulations.

**EFFECTIVE DATE:** August 25, 1997.

**ADDRESSES:** The docket for this notice is A–97–28. This notice pertains to previous final rules under dockets A–91–73 and A–91–74.

**FOR FURTHER INFORMATION CONTACT:** Regarding CAA section 112(r) and part 68, Vanessa Rodriguez, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5101), 401 M St., S.W., Washington, DC 20460, (202) 260–7913. Regarding TSCA section 8(d), David R. Williams, Associate Branch Chief, 401 M St. S.W., Washington DC 20460, (202) 260–3468. Regarding TSCA section 8(e), Richard H. Hefter, Jr., TSCA Section 8(e) Coordinator, High Production Volume Chemicals Branch, Office of Pollution Prevention and Toxics (7403), 401 M St. S.W., Washington, DC 20460, (202) 260–3470.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

Entities potentially affected by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Chemical Manufacturers. | Industrial organics & inorganics, paints, pharmaceuticals, adhesives, sealants, fibers. |
| Petrochemical | Refineries, industrial gases, plastics & resins, synthetic rubber. |
| Other Manufacturing. | Electronics, semiconductors, paper, fabricated metals, industrial machinery, furniture, textiles. |
| Agriculture ..... | Fertilizers, pesticides. |
| Public Sources. | Drinking and waste water treatment works. |
| Utilities ..... | Electric and Gas Utilities. |
| Others ..... | Food and cold storage, propane retail, warehousing and wholesalers. |
| Federal Sources. | Military and energy installations. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table also could be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions of part 68 and related notices. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### I. Introduction and Background

The Clean Air Act (CAA), section 112(r), contains requirements for the prevention of accidental releases. The goal of the accidental release provisions is to prevent accidental releases and minimize the consequences of releases by focusing on those chemicals and operations that pose the greatest risk. The CAA requires EPA to develop a list of regulated substances that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. At the time EPA promulgates its list of regulated substances, EPA also must establish threshold quantities for each regulated substance. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations promulgated under CAA section 112(r)(7).

On January 31, 1994, EPA promulgated the list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations (59 FR 4478) (the "List Rule"). EPA subsequently promulgated a rule requiring owners and operators of these stationary sources to develop programs addressing accidental releases and to make publicly available risk management plans ("RMPs") summarizing these programs. (61 FR 31668, June 20, 1996) (the "RMP Rule"). On April 15, 1996, EPA proposed amendments to the List Rule (61 FR 16598) and on June 20, 1996, stayed certain provisions of the list and threshold regulations affected by the proposed amendments (61 FR 31730). On May 22, 1997, EPA proposed additional amendments to the List Rule (62 FR 27992). For further information on these regulations, section 112(r), and related statutory provisions, see these notices. These rules can be found in 40 CFR part 68, "Chemical Accident Prevention Provisions," and collectively are referred to as the accidental release prevention regulations.

### II. Interpretations

In conducting outreach to affected stakeholders concerning the implementation of the accidental release prevention regulations, EPA has attempted to clarify informally various interpretive issues concerning both the List Rule and the RMP Rule. Furthermore, interpretive issues have been raised by various litigants that have petitioned for judicial review of the List Rule and the RMP Rule. EPA has used a number of mechanisms to communicate interpretations to all stakeholders, such as having staff participate in conferences and seminars sponsored by stakeholders and maintaining both files of questions and answers on its website and a hotline for addressing public inquiries. Question and answer files can be found at http://www.epa.gov/swercepp/ under Publications; the hotline can be reached at (800) 424–9346. Publication in the **Federal Register** allows EPA to give wider notice to the public of interpretations of the accidental release prevention regulations that have national application or nationwide scope and effect. Also, publication of these interpretations was part of the settlement agreement of General Electric Company's petition for review of the List Rule; notice of this settlement was published in the **Federal Register** on May 22, 1997 (62 FR 27992).

The interpretations discussed below clarify how to determine whether a threshold quantity for a regulated substance contained in a listed solution has been exceeded and discuss the relationship between offsite consequence analyses required by the RMP Rule and certain provisions of the Toxic Substances Control Act (TSCA).

These interpretations are clarifications of existing regulations and statutory provisions rather than revisions to the accidental release prevention regulations and are consistent with the working interpretations EPA has been using in its outreach efforts.

*A. Threshold Quantities for Listed Solutions*

In the regulations addressing the procedures for determining whether a threshold quantity of a regulated toxic substance has been exceeded, EPA set out rules for how to calculate the quantity of a regulated substance contained in a mixture (40 CFR 68.115). In general, the rule requires the owner or operator of a stationary source (the "source") to count towards a threshold the quantity of a regulated substance contained in a mixture if the regulated substance exceeds one percent (1%) of the weight of the mixture. However, if the partial pressure of the regulated substance in a mixture is less than 10 millimeters of mercury (mm Hg), then the source does not need to count the regulated substance in that mixture towards the threshold quantity (40 CFR 68.115(b)(1)). For example, if chemical A, a regulated substance, is present in a mixture at 5% by weight, but the partial pressure of that substance in the mixture is 7 millimeters of mercury (mm Hg), then the source does not need to count the regulated substance in that mixture towards the threshold quantity.

For certain chemicals commonly handled in solution with water, EPA established minimum concentrations for mixtures with water (40 CFR 68.130, Tables 1 and 2). These chemicals and their minimum concentrations are ammonia (20% or greater), hydrogen chloride / hydrochloric acid (37% or greater), hydrogen fluoride / hydrofluoric acid (50% or greater), and nitric acid (80% or greater). EPA also included separate listings for anhydrous forms of ammonia and hydrogen chloride.

Some confusion has arisen over whether the one percent default mixture rule would apply to mixtures containing aqueous solutions of ammonia, hydrochloric acid, hydrofluoric acid, or nitric acid. When EPA included minimum concentrations for these chemicals on the tables listing regulated substances, EPA intended to supersede the 1% general default rule for mixtures containing regulated toxic substances and to provide a simpler method for threshold determination than the partial pressure method. As EPA stated in the preamble to the List Rule, "[t]hese chemicals, in mixtures or solutions with concentrations below the specified cut-off, will not have to be considered in determining whether a threshold quantity is present" (59 FR 4478, 4488, January 31, 1994). Therefore, EPA wishes to clarify that the one percent mixture rule established in 40 CFR 68.115(b)(1) does not apply to aqueous solutions or mixtures containing ammonia, hydrochloric acid, hydrofluoric acid or nitric acid for purposes of determining whether more than a threshold quantity is present at a stationary source. For such mixtures, the quantity of regulated substance in the mixture must be considered only if the concentration of the regulated substance in the total mixture equals or exceeds the specified minimum concentration in the list rule.

Another question that has been asked about how to calculate the quantity of a regulated substance for a listed solution concerns whether the source must include the entire weight of the solution towards the threshold. For example, some have asked whether a 50,000 pound solution that is 28 percent (28%) ammonia (14,000 pounds of ammonia contained in solution) would exceed the threshold for aqueous ammonia, which is 20,000 pounds. Some have read the specific listing of these solutions to mean that the entire solution is the regulated substance, thus requiring threshold calculations to be based on the entire solution.

In providing concentration cutoffs for specific chemicals, EPA did not intend to treat the entire listed solution as a regulated substance. Rather, EPA intended simply to establish an alternative method for calculating minimum concentrations for substances that themselves are listed. The Agency's intent can be inferred from the location of the discussion of the concentration cut-offs in the "threshold determination" section of the List Rule preamble rather than in the discussion of the listing for toxic chemicals (compare 59 FR 4481–85 with 59 FR 4488). Furthermore, the citation in Tables 1 and 2 to the Chemical Abstract Service (CAS) number refers to the regulated substance contained in the solution rather than the entire solution. However, the Agency has not been consistent in expressing this interpretation since promulgation of the List Rule. For example, in the "Risk Management Plan Rule: Summary and Response to Comments" ("RMP/RTC") EPA stated, "[i]f the regulated substance is listed as a solution * * *, then the entire weight of the solution is used" (page 28–104). This incorrect expression of EPA's interpretation appears to be isolated and was not in the context of the development of the List Rule. The action announced today reaffirms the Agency's position taken in the List Rule context: the threshold quantities for solutions at and above the concentrations stated in the List Rule apply only to the quantity of the regulated toxic substance (listed in Tables 1 and 2 of 40 CFR 68.130) in the solution and do not include the water content of the solution. Thus, in the ammonia solution example discussed above, the threshold for aqueous ammonia would not be exceeded because the ammonia content of the 50,000 pound solution would be 14,000 pounds (28% of 50,000), while the relevant threshold would be 20,000 pounds of ammonia.

*B. Relationship to Certain TSCA Reporting Requirements*

Among the comments received on both the List Rule and the RMP Rule were questions that asked about whether either TSCA section 8(e) or the rules implementing TSCA section 8(d) require reporting under TSCA of either the RMP or the hazard assessment required by the RMP Rule. When EPA promulgated the RMP Rule, EPA replied in the RMP/RTC that it did not interpret the TSCA provisions to require submission of copies or listing of either RMPs or the hazard assessments required by the RMP Rule (RMP/RTC, page 33–56). EPA believes that an expanded discussion of the relationship between the RMP Rule and the TSCA requirements is appropriate and that wider dissemination of this interpretation by this notice is useful to regulated entities.

Under TSCA section 8(d), current and prospective producers, importers, and processors are required to submit a broad range of unpublished health and safety studies conducted on the chemical substances and mixtures listed at 40 CFR 716.120. Chemicals are periodically added to section 716.120 by rulemaking. The requirements become effective on the date specified in the final rule and prospective reporting obligations terminate no later than 10 years after the effective date or upon removal of the chemical substance or mixture from section 716.120. Such health and safety studies include but are not limited to: epidemiological or clinical studies; studies of occupational exposure; *in vivo* and *in vitro* toxicological studies; and studies of environmental effects. Copies of such studies possessed at the time a person becomes subject to the reporting requirements must be submitted, and the following kinds of studies must be listed: studies ongoing as of the date a person becomes subject to the rule;

studies initiated after the date a person becomes subject to the rule; studies that are known to, but are not possessed by, a person as of the date that person becomes subject to the rule; and studies previously submitted to U.S. Government Agencies without confidentiality claims. It should be noted that EPA is in the process of substantially revising the TSCA section 8(d) reporting requirements at 40 CFR part 716 and plans to issue a **Federal Register** notice detailing these revisions in the near future. The revisions are not expected to affect the interpretations included in this notice.

TSCA section 8(e) states that "any person who manufactures [including imports], processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the [EPA] Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information." The type of information required to be submitted under section 8(e) covers a broad range of health and environmental effects studies, exposure studies, and certain emergency release events not otherwise covered by other EPA reporting requirements. The majority of the information submitted concerns controlled laboratory studies of the effects of chemicals on human health and the environment, such as animal bioassays and a wide range of other *in vivo* and *in vitro* studies. Incidents of environmental contamination or exposure studies based on actual releases may also be required to be submitted based on the toxicity of the chemicals and the likelihood that humans or the environment will be impacted. However, modeling studies including those based on theoretical exposure data (e.g., "worst-case" scenarios), are not considered reportable under section 8(e), nor are hazard or risk assessments based on reviews of existing data. However, data or studies underlying the assessments may have been reportable at the time they were obtained by the companies performing the assessments if the information was not otherwise known to EPA.

Hazard assessments required by the RMP Rule consist of an offsite consequence analysis component and a five-year accident history (40 CFR 68.20 through 68.42). For most sources affected by the RMP Rule, the offsite consequence analysis requires development of two types of release dispersion analyses, "worst-case release scenario" analyses under 40 CFR 68.25 and "alternative release scenario" analyses under 40 CFR 68.28. Under the worst-case release scenario, the RMP Rule provides most of the modeling parameters, while under the alternative release scenario, a source has more flexibility in selecting modeling parameters. The worst-case release scenario analysis does not require a probability estimate of the specified worst-case conditions actually occurring, although the rule provides some flexibility if the specified conditions have not occurred in a recent period. The alternative release scenario is supposed to represent a scenario that is more likely to occur than the worst case scenario and that will have offsite consequences, unless no alternative scenario would have offsite consequences.

The two types of scenarios required to be analyzed under the hazard assessment provisions of the RMP Rule are not unlike "vulnerability analyses" that some sources have conducted for Local Emergency Planning Committees under the Emergency Planning and Community Right-to-Know Act (EPCRA) in that these scenarios concern theoretical upset plant conditions rather than actual or likely exposure scenarios. The Agency has previously expressed the view that vulnerability analyses are not reportable under TSCA section 8(d).

The five-year accident history component of the hazard assessment is a compilation of data on historical accidents, which would include information on release conditions, impacts, and changes that may have resulted from investigation of the release (40 CFR 68.42). As a compilation of historical incidents, the five-year accident history does not supersede requirements for notification of accidental releases under various statutes and is distinct from the RMP Rule's requirements for accident investigations under 40 CFR 68.60 and 68.81. In particular, TSCA section 8(e), EPCRA section 304, and section 103 of the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) may require a release to be reported and follow-up notification submitted.

Having reviewed the requirements of the RMP Rule in light of the requirements of TSCA section 8(d) rules and TSCA section 8(e), it is apparent that a hazard assessment mandated by the RMP Rule (i.e., worst case and alternative case scenario analyses and five-year accident history) is not subject to the copy and list submission requirements of the Health and Safety Data Reporting Rule codified at 40 CFR part 716, which implements TSCA section 8(d), and it is apparent that a hazard assessment mandated by the RMP Rule is not subject to the reporting requirements of TSCA section 8(e). However, the foregoing does not affect the applicability of either TSCA section 8(e) or TSCA section 8(d) and regulations promulgated thereunder to any information or studies used to develop such hazard assessment. For example, it has been a longstanding EPA interpretation of TSCA section 8(e) that it requires some releases to be reported to EPA; while such a release may need to be compiled in the five-year accident history, the release would remain subject to TSCA section 8(e) reporting. Similarly, a study initiated by a source on its own as an outgrowth of the five-year accident history, such as a follow up study on known animal impacts from a specific accidental release, may be subject to the listing and/or submission requirements of the TSCA section 8(d) and the rules thereunder. Nevertheless, it should be clear that the preparation, compiling, and reporting of hazard assessments as mandated by the RMP Rule do not trigger the copy and list submission requirements of the part 716 implementing regulation for TSCA section 8(d) nor do they require reporting under TSCA section 8(e).

Dated: August 19, 1997.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 97–22512 Filed 8–22–97; 8:45 am]

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federal register

Monday
August 25, 1997

Part X

# The President

**Executive Order 13060—Establishing an Emergency Board To Investigate Disputes Between Amtrak and Its Employees Represented by the Brotherhood of Maintenance of Way Employes**

Federal Register
Vol. 62, No. 164
Monday, August 25, 1997

# Presidential Documents

Title 3—

The President

Executive Order 13060 of August 21, 1997

## Establishing an Emergency Board To Investigate Disputes Between Amtrak and its Employees Represented by the Brotherhood of Maintenance of Way Employes

Disputes exist between Amtrak and its employees represented by the Brotherhood of Maintenance of Way Employes.

These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the "Act").

In the judgement of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States; including section 10 of the Act (45 U.S.C. 160), it is hereby ordered as follows:

**Section 1.** *Establishment of Emergency Board ("Board").* There is established, effective August 21, 1997, a Board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The Board shall perform its functions subject to the availability of funds.

**Sec. 2.** *Report.* The Board shall report to the President with respect to these disputes within 30 days of its creation.

**Sec. 3.** *Maintaining Conditions.* As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

**Sec. 4.** *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

**Sec. 5.** *Expiration.* The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William J. Clinton

THE WHITE HOUSE,
*August 21, 1997.*

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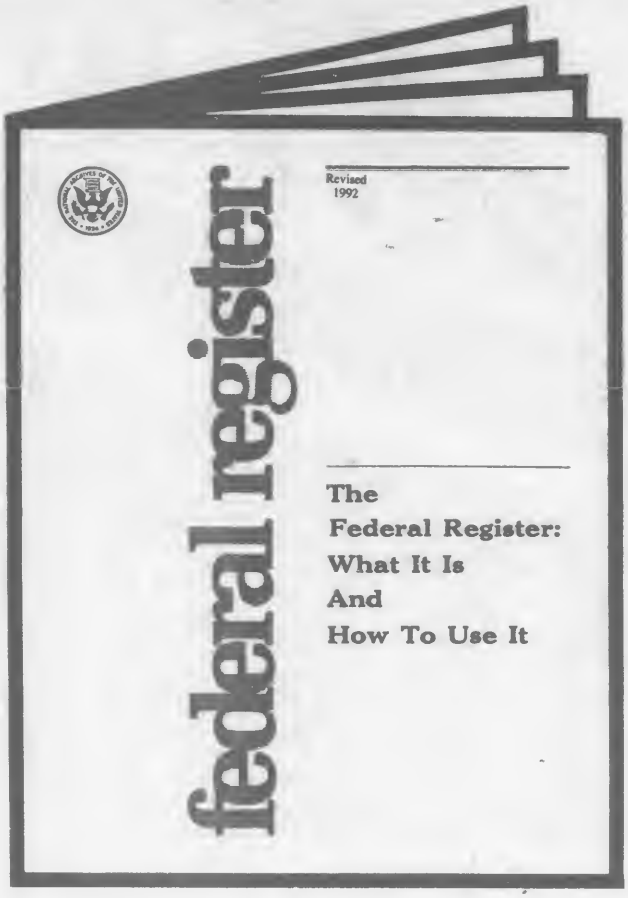


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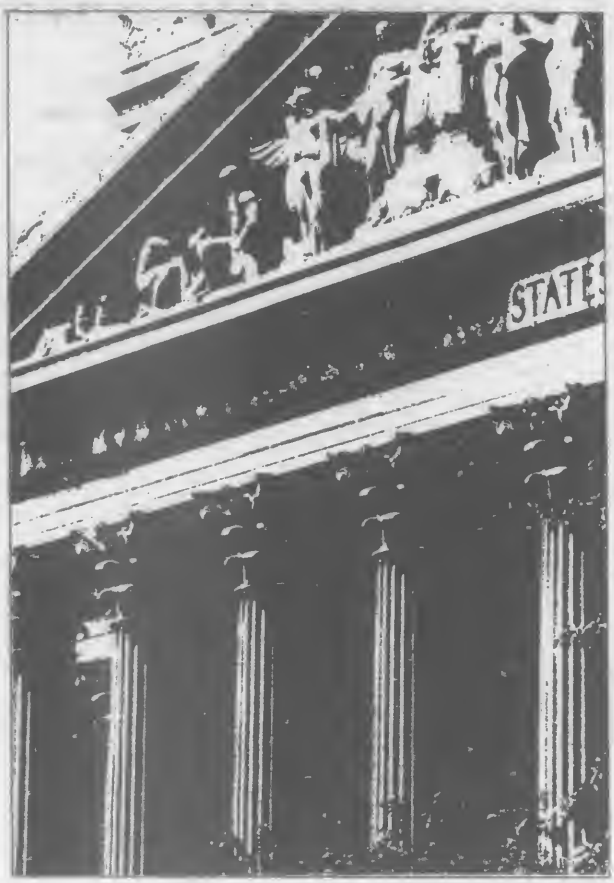


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